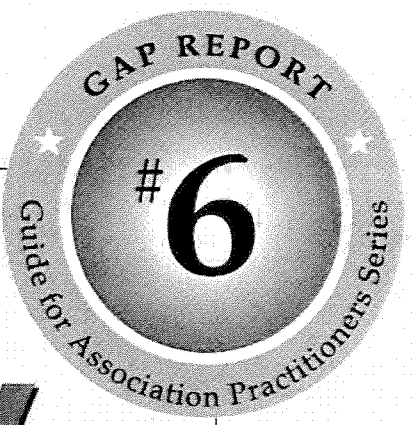

PROPERTY TAXES and HOMEOWNER ASSOCIATIONS

Fourth Edition

BY GEORGE R. GRASSER

ISBN 0-944715-69-9
Property Taxes and Homeowner Associations

Community Associations Press
A Division of Community Associations Institute
225 Reinekers Lane, Suite 300
Alexandria, VA 22314

To order additional copies of this report or other reports in the series, please write to the address above, call (703) 548-8600, or visit www.caionline.org/bookstore.cfm.

Printed in the United States of America

Contents

Acknowledgments

AUTHOR

George R. Grasser, Partner
Phillips, Lytle, Hitchcock, Blaine
& Huber LLP
Buffalo, NY

REVIEWERS

Katherine M. Lee, Associate
Phillips, Lytle, Hitchcock, Blaine
& Huber LLP
Buffalo, NY

Craig A. Leslie, Associate
Phillips, Lytle, Hitchcock, Blaine
& Huber LLP
Buffalo, NY

REVIEWERS OF THE THIRD EDITION

Gayle Cagianut, CPA
Oak View, CA

Michael J. Levin, PCAM®
Portland, OR

Monica J. Piga
Buffalo, NY

Gary A. Porter, CPA
Ventura, CA

CAI STAFF

Thomas M. Skiba, MBA
Chief Executive Officer

Debra H. Lewin, Director
Community Associations Press

Carrie Simpson
Assistant Art Director

COMMUNITY ASSOCIATIONS PRESS™

Community Associations Press, the publishing division of CAI, is dedicated solely to publishing the very best resources available for community associations. It publishes the largest collection of books and guides on community associations available today. Visit our bookstore online at www.caionline.org/bookstore.cfm.

Background and Key Points

If a community association holds legal title to common areas and facilities, its members run the risk of being taxed twice. The first tax is on the value of a lot or home. That tax reflects the value of the common areas and facilities and the owner's right to use them. The second tax is allocated because the owner must pay a share of the association's property tax costs.

A growing awareness of the extent and nature of double taxation has developed from the increase of homeowner associations in planned residential developments and cluster communities. This report will help community associations avoid double taxation by:

- Alerting associations that separately-owned common property may be subject to inequitable taxation on common property
- Informing associations of the steps available to resolve double taxation
- Alerting state and local government officials to the problem of double taxation and the inequities that may result
- Enabling those who draft association documents to avoid the pitfalls that could result in assessments to association property.

The purpose of this report is to assist an association, and its professionals, through the maze of technical and legal issues surrounding proper assessment of values of the common areas that affect property taxes. This report will not address other property tax issues that also plague associations, such as double taxation for municipal services or full taxation for reduced services.

Key Points

- The *ad valorem* property tax is the primary source of funding for local governments. It is based on property valuation—what a buyer will pay a seller.
- Determining the valuation or tax assessment of association-owned prop-

erty is complicated by the easements granted to owner-members. It is also complex because of restrictions and reservations placed on the property by deeds or other recorded instruments.

- An established principle of law is that the value of a parcel of property is reduced by the rights and easements carved out of it for the benefit of other property. The value of the benefited property should reflect the existence of these rights.
- Association-owned property, reserved by covenant for the exclusive use and benefit of owner members, has little value for tax purposes, since many of the beneficial rights to such property have been transferred to the members' property.
- Association property has limited value in the marketplace since generally no non-owner member may use it. Typically, it is not acceptable as security for a loan, because foreclosure would result in ownership without beneficial use or ownership subject to beneficial use by association members.
- If property taxes are imposed on association property, the community should appeal the assessed valuation based on the transfer of value to the benefited lots or homes of the association members. By doing this, the overall property taxes of the community may be lowered.
- If association property is not reserved by covenant for the exclusive use and benefit of owner-members, or if such property is available to others for a fee, the local government may impose a tax assessment on the property.

CHAPTER 1

The Double Taxation Problem

The primary source of funding for local government jurisdictions is the *ad valorem* property tax. *Ad valorem*, translated literally, means "according to value." In general, local authority to tax property is granted by state constitutional and statutory provisions and is guided by case law. State statutes normally prescribe the classifications of property to be taxed and the methods of assessment to be used. They may also set the rate of taxation.[1]

The *Ad Valorem* Tax

Ad valorem tax is typically linked to market value—what a buyer will pay for the property. The first step in the property tax process is the review of a parcel by the assessor and the determination of its market value.

Although appraisal practices and procedures vary widely, three basic approaches determine property value:

1. The cost, or reproduction cost, approach. This approach determines the cost of comparable land and the cost of construction or improvements. This method is often used in determining the value of properties with improvements on them.

The first step in the property tax process is the review of a parcel by the assessor and the determination of its market value.

2. The income, or capitalization, approach. This is an assignment of value based on the rental income from the property. This approach is often used in appraising rental buildings or commercial property. It may be used in those situations where the property of a homeowners association is made available for a fee to nonmembers on a seasonal, monthly, weekly, or daily basis. However, a 1987 Washington case, *Sahalee Country Club, Inc.* v. *Board of Tax Appeals*,[2] held that the income capitalization method was inappropriate for valuing a golf course for tax purposes since the property was a nonprofit

venture. The court concluded that the cost approach was the best approach for this "special purpose property" (e.g., a property constructed to fit the needs of a particular occupant).

3. The market, or comparative sales, approach. This is an assignment of value based on an analysis of sales prices of comparable property. This approach is almost always used on residential property and for valuing land.

Ways To Determine Property Value

Approach	Value Based On	Used For
■ Reproduction cost	■ Land, construction, improvements	■ Properties with improvements
■ Income or capitalization	■ Rental income	■ Commercial buildings, rentals
■ Market/sales	■ Comparable sales	■ Residential property and land

Problems With the Market Value Approach

If a homeowner association has a clubhouse or recreational facility, an appraiser will likely determine a value for the land based on the market approach—the price at which comparable land is selling—and the value for the improvements.

However, there are two major inconsistencies that arise when this approach is utilized. First, the value of the land is often determined by seeking comparable land "at its highest and best use." Association-owned property would typically be appraised for residential use. Residential land is more valuable than association land that is held for open space, recreational purposes, or other typical association purposes.

This method often overlooks the existence of easements of use and enjoyment granted to all lot owners within the community. Determining the value of association land without recognizing the easement assignment of beneficial use rights to owners results in an artificially high value of association lands.

The second problem arises in utilizing the cost basis for assigning a value to land improvements. The appraiser utilizes cost of construction data obtained from the builder or from standard construction industry tables, adjusts for changes, and assigns a value based on the estimated cost for improvements. The property is then taxed based on the market value of the land and the construction or reconstruction cost of the improvements.

In determining the sales price for residential lots, however, the developer has added in the costs of the common property land and improvements. The initial sales price of each lot, therefore, reflects that common property cost (land and construction costs). Each subsequent resale of a lot reflects the market value of the presence and rights of usage of that common property. Inequitable double taxation results when individual lots and homes are assessed at full value—including the rights to use association property—and common property is also assigned a value.

CHAPTER 2

Confronting the Double Taxation Problem

The common property and facilities owned by a homeowner association are often directly taxed as a result of the tax assessment procedures discussed in Chapter 1. Some associations, however, find that their members' properties may also be subjected to increased tax assessments. This tax increase is based on a theory that adds on the proportionate value of the common property to the market value of the individual lot or unit.

Assign Value to Benefited Owner

Any tax assessment based on both association property and on the members' property is double taxation and conflicts with an established rule of law. This rule of law states that the rights of one property owner to use the property of another should be taxed to the benefited or dominant property. The tax assessment on the used or servient property should be reduced accordingly. This rule of law has, in recent years, been upheld in a number of cases involving homeowner associations.[3]

Any tax assessment based on both association property and on the members' property is double taxation and conflicts with an established rule of law.

> ...where each homeowner is given an easement of enjoyment over the common areas and facilities [that] runs with and is appurtenant to his home, there is little justification for anything but a nominal assessment against the common areas and facilities. The assessor should assess the value of the appurtenant easement as part of the value of the home. In fact, he probably always does so, consciously or unconsciously. If that is the case, any attempt to put more than a nominal assessment on the common areas and facilities will result in double taxation and should not be permitted.[4]

Creation of the Dominant-Servient Estate Relationship

A dominant-servient estate property relationship can arise by an outright grant, such as an easement or right-of-way. It can also arise from the placement of restrictive covenants on the servient property. This relationship may be created involuntarily when, for example, a zoning ordinance requires certain parcels of land to be set aside for recreational use or as open space.

The most common way, however, is by granting an easement. For example, if property owner Jones gives Smith, an adjacent property owner, the right to cross over Jones' property to get to a beach, Jones' property would be the used or servient estate. Smith's property would be the benefited or dominant estate.

This dominant/servient property relationship is customarily created by a declaration of covenants, conditions, and restrictions that gives the association the right to use the common elements.

In determining the tax assessment on Smith's property, the assessor should include the value of access by easement across Jones' property to the beach. The assessor should also reduce the assessment on Jones' property by the amount of the increase in the assessment on Smith's property. Increasing Smith's assessment, without reducing Jones' assessment, would result in double taxation.

In a community association where the association holds title to the common property, such property is the servient property. The owner-members, who have been granted rights to use and enjoy the common property and facilities of the association, own the benefited or dominant property. This dominant-servient property relationship is customarily created by a declaration of covenants, conditions, and restrictions that gives the association the right to use the common elements. These rights to use and enjoy are usually in the form of easements and are often referred to as appurtenant because the easements benefit a dominant property.

Case Law Addressing the Double Taxation Problem

The New York case of *People ex rel Poor* v. *Wells*,[5] is one of the best known cases in this area. It is often cited as an example of the dominant-servient relationship.

In 1831, a developer established a private park (Gramercy Park) for the benefit of the owners and occupants of surrounding lots. By deed, the lot owners were given appurtenant easements of ingress and egress to and from the park. Owners were also given the right to use the park. Each lot owner was obligated to pay the trustees a portion of the expenditures necessary to maintain the park.

From 1831 to 1910, the City of New York included the value of the park privileges (easements) in the assessment of the individual lots. The city also assessed the parkland—a clear case of double taxation.

The court found that the easements were such that the parkland had to be devoted exclusively to park purposes for the benefit of the lot owners. The court ruled that the city could not increase the value of the dominant estate (the lots) by the value of the easement without lessening the value of the servient estate (the park). Accordingly, the tax assessment on the parkland was improper.

Two Michigan cases also establish that property should be taxed to its legally beneficial user. In the first, *Lochmoor Club* v. *Grosse Pointe Woods*,[6] the Lochmoor Club owned two parcels of land that were restricted by a deed covenant to park use for the benefit of the subdivision's individual lot owners. The Michigan Tax Commission decided that the parcels of land were taxable, just as if they were someone's front lawn or backyard. The Lochmoor Club went to court. The court ruled in favor of the club. It concluded that the restrictions on the property were "largely responsible for the destruction of the larger part of the value of the (common) property and should result in a very material reduction in assessments...."[7] The court said that to ignore the restriction constitutes "fraud on the taxpayer."[8]

In the second Michigan case, *Deerfield Village Community Association* v. *West Bloomfield Township*,[9] a subdivision developer deeded a parcel of land with a community house, swimming pool, parking lots, and other improvements to the homeowner association. Recorded covenants provided for the use of this common property by the residents of the subdivision. The tax assessor gave an assessed value to the common property for real property tax purposes. The homeowners contested the assessment. After an unsuccessful appeal to the State Tax Commission, the association filed suit. The court rejected the tax commission's approach and found that its holding of Lochmoor Club applied. The matter was remanded to the Michigan State Tax Commission for an assessment in accord with the directions given by the court in the Lochmoor case.

In an Oregon case, *Tualatin Development Co.* v. *Department of Revenue*,[10] the court held that an unprofitable golf course in a planned community that was restricted to recreational use and open space had no true cash value for property tax purposes.

In *Supervisor of Assessments* v. *Bay Ridge Properties*, Inc.,[11] a Maryland court held that the value of the beach land—reserved exclusively for use of adjacent property owners by specific grants in deed—had been attached to the adjacent lots. The court said that the deed reservations deprived the beach land of its value. The court concluded that the "easement rights...held by the owners of lots...enhance the value of the lots themselves, and such enhancement is directly reflected in the assessments of those properties."[12]

restrictions on the property were "largely responsible for the destruction of the larger part of the value of the (common) property and should result in a very material reduction in assessments

A Florida case, *Department of Revenue* v. *Morganwoods Greentree. Inc.*,[13] involved a 200-unit townhouse community with common areas restricted to the owners' use. The court held that the assessor failed to consider the restrictive encumbrances on the property. The court directed a reevaluation of the property for tax purposes. This decision was upheld on appeal. The appellate court stated that the residential unit properties and the common property were intertwined and that "the ultimate test is that the total valuation of the entire project must be just valuation...."[14]

Although many associations have successfully reduced their property taxes, a Minnesota court held in *Preserve Association* v. *City of Eden Prairie*,[15] that a homeowner association's nominally taxed common areas are subject

to special assessments levied for the installation of sewers, curbs, gutters, sidewalks, and a pavement upgrade. The court stated that in determining whether an improvement benefits property, "the land should be considered simply in its general relations, and apart from its particular use at the time...."[16]

Notwithstanding the above cases several states have a different position.

In the Ohio case of *Muirfield Association* v. *Franklin County Bd. of Revision*,[17] the court, citing an earlier Ohio case of *Ross* v. *Franko*,[18] held that "for real property tax purposes, the fee simple estate is to be valued as if it were unencumbered" and refused to recognize the dominant-servient relationship as effectuating a transfer of taxable value.

In *Long Cove Homeowner's Association* v. *Beaufort County Tax Equalization Bd.*,[19] the Supreme Court of South Carolina, ignoring the easement rights imposed by the declaration of members to use the common areas having a nearby amenity such as a lake, a golf course, or an ocean, and citing the Illinois case of *Lake County Bd. of Review* v. *Property Tax Appeal Bd.*,[20] said that South Carolina "also has no assessment principle which would allow the assessed value of the common areas to be reduced because of its effect on surrounding property." The court concluded that "the value of the common areas cannot be assessed to the individual lot owners nor can its value be reflected in the valuation of the residential lots by increasing the value of those lots."

Statutes Addressing the Taxation of HOA Property

The methods used to determine property value for associations and their owner-members vary considerably. Statewide statutory language directed at equitable assessment of community association properties could help eliminate this variance. Such legislation has been enacted in California,[21] Colorado,[22] Connecticut,[23] Illinois,[24] North Carolina,[25] Nevada,[26] North Dakota,[27] Pennsylvania[28] and Texas.[29] (See Appendix 1.)

The North Carolina and Texas statutes state that association-owned property should be assessed for tax purposes on the basis of a nominal value. The North Carolina statute states, "the enhanced value of the individual properties (of the members) because of the right to the use and benefit of the facilities shall be a factor taken into consideration by the appraiser."

In determining whether an improvement benefits property, "the land should be considered simply in its general relations, and apart from its particular use at the time...."

The Texas statute has similar language. The association must meet federal guidelines for exemption from income tax in order to qualify for the nominal tax assessment value on its real property (e.g., qualifying as nonprofit homeowner association organizations under Section 528 of the Internal Revenue Code).

The North Carolina and Texas statutes fail to recognize that double taxation should be avoided in all situations where common areas are owned by a property owners' association. Limiting taxation of association-owned property to those instances where the association qualifies for exemption

under Section 528 of the Internal Revenue Code ignores the common-law prohibition against double taxation. This limitation is likely to encourage double taxation of owners in nonresidential association developments since such statutes do not cover properties of associations that do not qualify for exemption under Section 528 of the Internal Revenue Code.

A Colorado statute requiring that association property not be assessed separately was repealed in 1993 and replaced with the provisions of the Colorado Common Interest Ownership Act. The Act provides for the valuation of community association property to be "assessed proportionately to each unit...in accordance with such unit's allocated common expense liability, set forth in the declaration...."

The North Dakota law provides that the "value of the townhouse property shall be increased by the value added resulting from the right to use any common areas...." It also states that the "common areas of the development shall not be separately taxed."

By providing that the value of the common area must be "assessed proportionately to each unit" (Colorado and North Dakota) unless a recorded declaration provides for a different apportionment (North Dakota), these statutes encourage the add-on form of taxation. Double taxation will result if the tax assessor uses the market prices of the lots or units and adds on an assessment representing the value of the lot or unit owner's interest in the common areas. Also, when the common areas are taxed directly, the individual owner-members cannot take an income tax deduction for their proportionate share of the property taxes paid by the association.

By providing that the value of the common area must be "assessed proportionately to each unit" these statutes encourage the add-on form of taxation.

Connecticut and Pennsylvania have adopted uniform legislation. The Acts provide for each unit and its interest in the common elements or common facilities to be taxed together as a separate parcel and no separate tax assessment may be rendered against any common element area or common facility.

The National Conference of Commissioners on Uniform State Laws, which recommends uniform legislation for individual states, has adopted two uniform Acts. The Uniform Planned Community Act (UPCA)[30] and the Uniform Common Interest Ownership Act (UCIOA)[31] both prohibit tax assessment of lands if the declarant has not reserved development rights with respect to association lands.

Any state legislation enacted to correct the common-area taxation problem should:

1. Require the taxing authority to recognize that the market value of the property of each member includes the value of the member's easement rights to use the common areas and association facilities.

2. Prohibit a direct assessment on the common areas and association facilities that are available for the exclusive use of association members and their guests.

3. Prohibit an assessment on the property of an individual member (for a portion of the common areas) in addition to the assessment based on the full market value of the member's property.

However, legislation is not an absolute assurance that association property will not be taxed. In a 1985 Texas case, *Waterwood Improv. Association* v. *San Jacinto County Appraisal Review Bd.*,[32] the court held that a Texas statute providing for swimming pools, other recreational facilities, parking lots "or other similar property" to be assessed at a nominal value, did not apply to timber on the association common areas. The court concluded that the legislature could not have intended the timber to be assessed at a nominal value.

CHAPTER 3

Disputing Double Taxation

Despite cases establishing that property should be taxed to its legally beneficial user, association members may still be faced with inequitable common-area taxation. Local governments often lack the awareness they need to prevent it.

Associations that own common property may encounter taxation when the taxing authority:

1. Assesses the common properties and facilities without regard to the easements granted to lot owners and assesses individual lots at full market value.

2. Assesses the members' property at full market value and adds on an additional amount. That amount represents the unit owner's share of the value of the common property.

Other inequities are also encountered. For example, the market value of homes in a community association may reflect many items that are not "real property," such as the value of the association as an ongoing business that performs maintenance and other functions.

Owners in associations faced with common-area taxes may dispute the disparity between local government service delivery to association communities and non-association communities. Although those members are taxed on the same basis as non-association property owners, they may receive fewer direct public services.

This service-related debate, if raised, can direct attention away from the basic issue of proper tax assessment and confuse the situation. This service equity issue would have greater impact if dealt with in separate negotiations

Causes of Improper Assessments

- Common areas are assessed without regard to easements granted to owners.
- Additional amounts are added to members' assessments representing their share of the common area.

seeking user charge rebates or discounts for services. In New Jersey in 1989, community associations were able to obtain legislation requiring municipalities to reimburse "qualified private communities," such as condominiums, cooperatives, and homeowner associations for the cost of specified services (e.g., trash collection).

Meet With the Assessor

An association faced with an improper assessment should meet with its local assessor. The association should explain its position clearly and should provide the assessor with sufficient background material. This information should help the assessor justify an assessment reduction.

The assessor is responsible for raising the revenues required by the local government and is subject to many external pressures.

Association members should be aware that the assessor is responsible for raising the revenues required by the local government and is subject to many external pressures. Accordingly, the evidence presented by community association members in support of their position should be accurate and persuasive. Existing case law can be used to strengthen the association's position.

In these discussions, the association should attempt to convince the assessor to reduce the assessment and thus, reduce property taxes. The assessing authority generally has the discretion to do so if persuaded that the current assessment is improper.

It may be helpful for the association to arrange a meeting between the attorneys for the association and the taxing authority. This meeting will reinforce the legal basis of the association's position.

Reclassify Common Areas

As another option, some states allow an association to obtain a lower assessment by reclassifying the common areas as agricultural land, forest resources, or by utilizing other statutory provisions enacted to preserve open space. Maryland, Florida, and Washington have enacted such laws. Although the association may still be double taxed, the amount of the tax bill on the common areas in these cases is often minimal. The association must then weigh a tax bill of low or minimal amount against the cost and additional tax savings of pursuing formal appeals and litigation.

Appeal and Negotiate

Informal negotiations can work well for associations. If they are not successful, and if reclassification of the property is not possible, then the association should proceed through the formal tax appeal process and litigation. A number of associations have successfully appealed their tax classifications. Many cases of success are listed in this report and can be used to support an association's position.

Association leaders should investigate the appeals process before undertaking a formal protest and litigation. Expert consultation is necessary since the process is complex. Usually the procedure requires that the association or a member file a formal tax protest that entitles the taxpayer to a

hearing before an assessment review group. At the hearing, the association or property owner has the opportunity to present the argument for a reduction. If internal appeal efforts are unsuccessful, the only recourse available is legal action.

Litigate

Before commencing litigation, the association or property owner should consult with an attorney experienced in real property tax litigation. The initial task of the attorney is to determine who can bring suit. Most state laws only permit the association to sue for a reduction in the property assessments. Any action seeking a reduction in the assessments on the property of individual members should be brought by those owners. If the action was permitted and was successful, the members who did not participate in it would not obtain any benefit for the years involved. However, nonparticipating members may benefit in subsequent years if the improper assessment practice is corrected.

In undertaking litigation, the association should be prepared for a lengthy, costly process. It may take years to reach a decision in court, both because of the court process itself and because of delaying tactics the taxing authority may use to wear down the association. If the association has the opportunity to negotiate a settlement out of court, it should consider this option carefully. However, an out-of-court settlement is less likely to achieve substantial reduction.

Why Authorities Think Association Property Should Be Taxed

- The property has value because the association can mortgage it.
- The property has value because the association charges user fees to nonmembers.
- The assessment of the servient estate—the association property—cannot be adjudged properly unless it can be determined whether or not the assessments on the beneficial properties account for the value of the association property.
- The property has value because of its potential for further development.
- Because the declaration (that gives easement rights to members) can be changed by fewer than all the members, those rights don't justify lowering the value of the association property.

If the association pursues litigation, it must realize that—as the complaining taxpayer—it has the burden of proof. The association must clearly prove that the assessment is improper.

Once in court, the association should state that:

- The common property has been stripped of most of its value by virtue of easements granted to the lot owners. Thus, common property should be assessed at a nominal value.
- The market value of the individual units already reflects the existence of easements. Therefore, no assessment in addition to the unit's market value should be imposed.

The taxing authority may attempt to establish that the common areas

and facilities have a value in excess of the easement or use rights of association members.

The basis for a taxing authority's claim that the association property should be taxed is likely to be based on one of the following:

1. The property has value because the association can mortgage it—especially if the declaration of covenants, conditions, and restrictions gives the association such right. The association should respond by claiming that its property has little or no market value because it is subject to the easements of use and enjoyment of all property owners. It should also claim that anyone lending money to the association would look primarily at its ability to collect assessments, not to its property. A review of the association documents should help demonstrate this point. The association may need to bring in a banker to testify on its behalf.

The assessor is responsible for raising the revenues required by the local government and is subject to many external pressures.

2. The property has value because the association charges user fees to nonmembers. Several cases have addressed this issue in recent years. These cases indicated that if common property is owned by a community association and used by nonmembers:

- The association's property is not totally servient to the property of the members.
- The economic value or benefit to the association in allowing nonmembers to use the common areas should be reflected in the tax assessment.

In a 1978 New York case, *Grasser* v. *Graham*,[33] a community association that had its swimming pools and tennis courts assessed for real property tax purposes sought summary judgment against the tax assessor without a trial. The court denied the association's request and stated that because the association's legal documents gave the directors the right to allow nonmembers to use its facilities for a fee, the association had a beneficial interest in the property. Therefore, the property had more than a nominal value for tax purposes. The case was remanded for trial on the issue of the value of the association's beneficial interest. It was subsequently settled prior to trial to the association's satisfaction.

In a 1982 Ohio case, *Beckett Ridge Association No. I* v. *Butler County Bd. of Revision*,[34] the separate tax valuation of common areas was upheld where the association's legal documents permitted the association to make the common areas available to the public for a fee.

But in the 1985 Virginia case of *Lake Monticello Owners' Association* v. *Ritter*,[35] the court concluded that, because it was not profitable, a golf course owned by a community association should be assessed at a nominal value, even though it was open to nonmembers who paid the association up to $30,000 a year for its use.

In a 1986 Pennsylvania case, *County of Monroe* v. *Pinecrest Dev. Corp.*,[36] the court assessed association common areas separately because the association extended memberships in its golf course to individuals not owning lots in the development. The same court affirmed this position in the 1992 case of *Timber Trail Community Association* v. *County of Monroe*.[37] The court cited the use of association recreation areas by nonmembers either for a fee, in lieu of com-

pensation as employees of the association, for volunteer services to the association, or as guests of association members. In all cases, the court stated that:

> the common areas could have greater value than the collective value of the property owners' easements if [the property owners] released or modified their easements to permit the [association] to extend privileges to individuals not owning property.[38]

The association can reduce the possibility of the taxing authority raising this issue by eliminating all references in its legal documents to the association's right to permit nonmembers to use its facilities for a fee.

3. The assessment of the servient estate—the association property—cannot be adjudged properly unless it can be determined whether or not the assessments on the beneficial properties account for the value of the association property.

This position would establish that the assessments on the individual lots did not reflect the value of the easements and that the claim of double taxation is without merit.

Such a claim should be contested by the association since only the property assessment of the association's property is at issue. However, this is not what happened in the Alabama case of *Lake Forest Property Owners Association* v. *Baldwin County Bd. of Equalization*.[39] In that case, the lower court upheld an assessment of association property for more than a nominal value. The appellate court affirmed, rejecting the association's argument that the encumbrances on the association's property reduced the value of the property to zero, or to only a nominal amount. In doing so, the appellate court noted testimony by the assessors experts that lots within the development sold for about $4,000 less than lots outside the development. The association should not suffer a heavier burden of proof because the assessor neglected to assess the property of association members.

The association should not suffer a heavier burden of proof because the assessor neglected to assess the property of association members.

In the Nevada case of *Sun City Summerlin Community Association* v. *State by and through its Department of Taxation*,[40] the homeowners association, which owned a golf course and recreation centers, sought to have the property tax assessment in its facilities reduced to a nominal value as required by the law. The court agreed that restrictions should be taken into account in determining value for tax assessment purposes. However, the court compared the situation to a condominium. Because a Nevada statute provides that common element areas in a condominium are to be taxed as part of each unit to the unit owner, the court held the statute's preclusion of taxation of common areas is void for violating the prescription "for a uniform and equal rate of assessment and taxation" as provided by the Nevada State constitution.

The cost of appraisals of all property benefiting from the common areas would be prohibitive and would probably preclude the association or property owners from continuing with the litigation.

Interestingly, however, in a 1974 Colorado case, *Devil's Thumb Townhouse Association* v. *Boulder County Bd. of Equalization,*[41] the court agreed that the common property should have been assessed at a nominal value. It found that the assessor had not recognized that value when assessing the individual lots. Therefore, double taxation did not occur in the contested year. The assessor, however, was ordered to change future procedures to assure a nominal valuation of the common property.

In the 1989 Arizona case of *Recreation Ctrs.* v. *Maricopa County,*[42] the Arizona Court of Appeals ruled that a recorded restriction limiting homeowner association property for the purpose of operating and maintaining a community center and recreational facilities without pecuniary gain or profit destroyed the property's value for tax purposes. On appeal, the Arizona Supreme Court reversed the decision on the basis that, under Arizona statutory law, all property must be taxed unless specifically exempted by the state's constitution, and the association's property was not statutorily exempt. The court stated that the association had an obligation to prove that the value of the homes in the community was increased because of the right of use of the common areas and facilities. The court said the association did not prove that:

- The value of membership in the association was offset by monthly dues or the existence of the common facilities made homes in the community more valuable than other homes in an equally desirable location.
- Each of the homes in the community benefited from the availability of the facilities.

The court rejected the association's theory that the assessment should "flow through" with the benefits from the association property to the dwelling units and said the question was the value of the recreational properties and not the value of the homes that benefit from the recreational properties. Citing the cases of *Alvin* v. *Johnson (Minn.)* and *Locke Lake Colony (New Hampshire),* the court stated that association property "must be valued for tax purposes as its use is affected by the easement, just as the property benefited by the easement must be valued as its use is enhanced by the easement." (See Appendix 2.) Since the association offered no evidence of an increase in value of the benefited property, the taxable value of the association property "cannot merely evaporate." Just because association property benefits others does not mean the property has no value. The court, in dismissing the restriction against profitability as a factor in determining the tax assessment, said the property itself—not the profitability of property—was the relevant factor in levying taxes.

A restriction limiting homeowner association property for the purpose of operating and maintaining a community center and recreational facilities without pecuniary gain or profit destroyed the property's value for tax purposes.

The court did conclude that a restriction limiting property to recreational use affected its value and was a factor to account for in determining the tax assessment. The case was remanded back to the trial court for a determination of value of the common areas.

4. The property has value because of its potential for further develop-

ment. In the case of Colorado *Arlberg Club* v. *Board of Assessment Appeals*,[43] the appellate court ruled that the tax assessor could not take into account possible future use of lands owned by a community association that were zoned for multifamily use. The Colorado Supreme Court reversed the finding and stated that the potential for development could be taken into account for tax assessment purposes. This case differs from most that community associations face. In this case, the club sold 35 of the 125 acres that it owned to a developer for the construction of condominiums as part of a planned unit development (PUD) covering all 125 acres and additional lands not owned by the club. Eighteen of the remaining acres were improved with "clubhouse facilities."

A restriction limiting property to recreational use affected its value and was a factor to account for in determining the tax assessment.

Although the remaining acreage was left undeveloped to protect members' privacy, it was zoned for multifamily development. It was subject to an overall requirement in the PUD that 25 percent of all lands be designated as open space. Even though land development was limited by the PUD open space and density requirements, the court concluded that the ordinance could be amended to permit more development than was presently allowed.

If an association owns property that has been properly restricted, the tax assessment should indicate that property development depriving association members of such use will likely require a vote of the members. Since a significant percentage of the members would be required to change the restriction, the vote will probably not be a factor in determining the property assessment.

5. The right of fewer than all of the association's members to terminate the declaration providing the easement rights to its members makes those rights less than easements and insufficient to justify a diminished value of the association property. In a 1982 New Hampshire case, *Waterville Estates Association* v. *Town of Campton*,[44] the municipality claimed that, because the rights of the members of the association to use common areas were contained in a declaration of covenants that could be terminated by a two-thirds vote of all members, the use rights were licenses—not easements. They claimed that, accordingly, the value of the common areas should not be diminished because of such rights. The court concluded that the method of termination or modification of the declaration by a two-thirds vote of members was commonly accepted. It also concluded that the right to the use of the common areas was a sufficient easement to justify a tax abatement for the association.

CHAPTER 4

Avoiding Double Taxation

Mistakes often occur in the original subdivision process. Many go unnoticed for years. These problems surface when large property tax assessments are made and the association is finally forced to take action.

Designate Parcels Correctly

In California, the developer subdivides the parcels and designates the type of parcel. The appropriate local governmental official enters this into the subdivision map. Numbered parcels represent those that are available for sale. Lettered parcels represent association common areas. Numbered lots are not exempt. If the lots are numbered, the association may face a large direct assessment that is not subject to California Revenue & Taxation Code Sections 2188.3 and 2188.5. Since the assessed valuation of the parcel is set at the minimum valuation of nine dollars, no property tax has ever been assessed.

Many parcels are improperly identified at the time of subdivision. For instance, a slope—clearly a common-area parcel—should not be a numbered lot. A properly categorized, lettered lot is exempt.

California law is clear on the taxation of association common area parcels. Revenue & Taxation Code Section 2188.3 (for condominiums) and 2188.5 (for planned developments) states that no property taxes may be assessed on common-area parcels.

To get around the limitations of California's Proposition 13 (property tax limitation initiative approved by the voters), many California special districts make direct assessments against parcels. Direct assessments are specific purpose charges. They are exempt from the

Types of Parcels and Their Tax Status

Numbered

- Available for sale
- Not exempt
- Subject to taxation

Lettered

- Common areas
- Exempt
- Not subject to taxation

limitations of Proposition 13. A large, sloped area without a separate water meter is a prime target for this type of assessment.

The association may end up with tax assessments it is unable to eliminate, simply because nobody took the time to determine the property tax status of each common-area parcel. This problem is compounded when the property taxes go unpaid for several years.

Associations and their developers in California and in any other state with similar requirements should review the association's subdivision map to ensure that all common-area parcels are properly identified and categorized. If any problems are discovered, immediate action to correct the problem should be taken, even if this means filing a corrected subdivision report or map. Failure to take action could result in large tax assessments that are difficult, if not impossible, to reverse.

Basic Legal Document Provisions Are Needed

Three principles must be included in association legal documents to sustain arguments regarding common area taxation. These principles are basic to the legal fabric of the association and are often taken for granted, resulting in inadequate language.

1. Membership in the association is mandatory and automatically passes with the transfer of property subject to the covenants.

2. The right to use and enjoy association-owned common property and the obligation to share in the maintenance costs "run with the land" and are appurtenant to each lot.

3. The common areas and facilities exist, and are to be used exclusively for, the benefit of the property owner members of the association.

These provisions will be the basis of the association's defense against arguments used by the tax assessor. They are necessary factors to support the association's contention that the property owners are committed to preserving the common property.

How Association Documents Protect Against Double Taxation

Association governing documents should articulate the following principles regarding common property in order to protect the association against double taxation.

- Association membership is mandatory.
- Association membership passes automatically when property is transferred.
- Members' rights to use and enjoy common areas "run with the land."
- Members' obligations to share the cost of maintaining the common areas "run with the land."
- Common areas are for the exclusive use of members.

The 1981 Nebraska case of *Beaver Lake Association* v. *County Bd. of Equalization*[45] illustrates the importance of documenting association members' rights to use the common areas and facilities in the official land records. In that case, documentary evidence of the restricted use of the common areas and of the members' rights to use the common areas was contained in the

association's articles of incorporation, bylaws, standard form of membership agreement, and lot purchase agreements. It was not in the official records. As a result, the court said that the grant of use privileges in the common areas claimed by the association in favor of the lot owners "lacks sufficient formality, definition and duration of creation to constitute valid restrictions."

Analyze Pertinent Issues

Community associations faced with common area taxation should carefully analyze the issues presented in this report before deciding to pursue a resolution. Associations with properly drafted legal documents should have the weight of case law and precedent on their side. The process may seem complex, lengthy, and costly but the direct financial rewards can be substantial.

References

1. "Rising Property Taxes—Can Anything Be Done?" National Club Association Reference Series, National Club Association, Washington, D.C., 1976.
2. *Sahalee Country Club, Inc.* v. *Board of Tax Appeals*, 108 Wash.2d 26, 735 P.2d 1320 (Wash.1987).
3. See Appendix 2. Selected Case Citations.
4. Krasnowiecki, Jan A., "Townhouse Condominiums Comparted to Conventional Subdivisions With Homeowners Associations," 1 Real Estate Law Journal 323, 341.
5. *People ex rel. Poor* v. *Wells*, 200 N.Y.518, 93 N.E. 1129 (N.Y. 1910).
6. *Lochmoor Club* v. *Grosse Pointe Woods*, 10 Mich. App. 394, 159 N.W.2d 756 (Mich. Ct. App. 1968).
7. *Lochmoor*, 10 Mich. App. at 398, 159 N.W.2d at 758 (citing *Helin* v. *Grosse Point Township*, 329 Mich. 396, 45 N.W. 2d 338 (Mich. 1951)).
8. *Lochmoor*, 10 Mich. App. at 398, 159 N.W.2d at 758.
9. *Deerfield Village Community Association* v. *West Bloomfield Township*, 25 Mich. App. 138, 181 N.W.2d 62 (Mich. Ct. App. 1970).
10. *Tualatin Development Co., Inc.* v. *Department of Revenue*, 256 Or. 323, 473 P.2d 660 (Or. 1970).
11. *Supervisor of Assessments* v. *Bay Ridge Properties*, Inc., 270 Md. 216. 310 A.2d 773 (Md. 1973).
12. *Id.*
13. *Department of Revenue* v. *Morganwoods Greentree, Inc.*, 341 So.2d 756 (Fla. 1976).
14. *Id.* at 759.
15. *Preserve Association* v. *City of Eden Prairie*, 421 N.W.2d 419 (Minn. Ct. App. 1988).
16. *Id.* at 421. Citing *Village of Edina* v. *Joseph*, 264 Minn. 84, 119 N.W.2d 809 (1962).
17. *Muirfield Association* v. *Franklin County Bd. of Revision*, 73 Ohio St. 3d 710, 654 N.E.2d 110 (Ohio 1995).
18. *Ross* v. *Franko*, 139 Ohio St. 395, 40 N.E.2d 664 (Ohio 1942).
19. *Long Cove Homeowners' Association* v. *Beaufort County Tax Equalization Bd.*, 327 S.C. 135, 488 S.E.2d 857 (S.C. 1997).
20. *Lake County Bd. of Review* v. *Property Tax Appeal Bd.*, 91 Ill. App.3d 117, 414 N.E.2d 173 (Ill. App. Ct. 2d Dist. 1980).
21. California Revenue and Taxation Code, Section 2188.5 (1971).
22. Colorado Revised Statutes Annotated, Section 38-3.33-105 (1991), 39-1-103(10)(1993).
23. Conn. Gen. Stat. §47-200 (2001).
24. 765 Ill. Comp. Stat. 605/10 (2001).
25. N.C. Gen. Stat. §105-277.8 (1999).
26. Nev. Rev. Stat. Ann. §116.1101 (1998 & Supp. 2001).
27. N.D. Cent. Code §57-02-11.1 (2001).
28. 68 Pa. Cons. Stat. Ann. §5105 (2001).
29. Tex. Tax Code Ann. §23.18 (Vernon 1992).
30. UPCA Section 1-105.
31. UCIOA Section 1-105.
32. *Waterwood Improv. Association* v. *San Jacinto County Appraisal Review Bd.*, 697 S.W.2d 834 (Tex. App. Beaumont 1985).
33. *Grasser* v. *Graham*, 97 Misc. 2d 417, 411 N.Y.S.2d 836 (1978).
34. *Beckett Ridge Association No. I* v. *Butler County Bd. of Revision*, 1 Ohio St. 3d 40, 437 N.E.2d 601 (Ohio 1982).
35. *Lake Monticello Owners' Association* v. *Ritter*, 229 Va. 205, 327 S.E.2d 117 (Va. 185).
36. *County of Monroe* v. *Pinecrest Dev. Corp.*, 510 A.2d 1974 (Pa. Commw. Ct. 1986).
37. *Timber Trail Community Association* v. *County of Monroe*, 614 A.2d 342 (Pa. Commw. Ct 1992).
38. *Id.*, at 345, citing *County of Monroe* v. *Pinecrest*, supra note 26 at 204.
39. *Lake Forest Property Owners Association* v. *Baldwin County Bd. of Equalization*, 587 So.2d 393 (Ala. Cir. App. 1991).
40. *Sun City Summerlin Community Association* v. *State by and through its Department of Taxation*, 113 Nev. 835, 944 P.2d 234 (Nev. 1997).
41. *Devil's Thumb Townhouse Association* v. *Boulder County Bd.*, State of Colorado, Docket No. 437, November 1974, and District Court, County of Boulder, Action No. 73-2430-1.
42. *Recreation Ctrs.* v. *Maricopa County*, 162 Ariz. App. 277, 782 P.2d 1170 (Ariz. Ct. App. 1986), vacated 162 Ariz.281, 782 P.2d 1174 (Ariz. 1989).
43. *Colorado Arlberg Club* v. *Board of Assessment Appeals*, 719 P.2d 371 (Colo. Ct. App. 1986), rev'd 762 P.2d 146 (Colo. 1988).
44. *Waterville Estates Association* v. *Town of Campton*, 112 N.H.506, 446 A.2d 1167 (N.H. 1982).
45. *Beaver Lake Association* v. *County Bd. of Equalization*, 210 Neb. 247, 313 N.W.2d 673 (Neb. 1981).

APPENDIX 1: Legislative Approach

Texas Property Tax Code Ann.

Section 23.18. Property Owned by a Nonprofit Homeowners' Organization for the Benefit of Its Members

(a) Because many residential subdivisions are developed on the basis of a nonprofit corporation or association maintaining nominal ownership to property, such as swimming pools, parks, meeting halls, parking lots, tennis courts, or other similar property, that is held for the use, benefit, and enjoyment of the members of the organization, that nominally owned property is to be appraised as provided by this section on the basis of a nominal value to avoid double taxation of the property that would result from taxation on the basis of market value of both the property of the organization and the residential units or lots of the members of the organization, whose property values are enhanced by the right to use the organization's property.

(b) All property owned by an organization that qualifies as a nonprofit homeowners' organization under this section is appraised at a nominal value as provided by this section if:

(1) the property is held for the use, benefit, and enjoyment of all members of the organization equally;

(2) each member of the organization owns an easement, license, or other non-revocable right for the use and enjoyment on an equal basis of all property held by the organization, even if the right is subject to a restriction imposed by the instruments conveying the right or interest or granting the easement or subject to a rule, regulation, or bylaw imposed by the organization pursuant to authority granted by articles of incorporation, declaration of covenants, conditions and restrictions, bylaws, or articles of association of the organization; and

(3) each member's easement, license, or other non-revocable right to the use and enjoyment of the property is appurtenant to and an integral part of the taxable real property owned by the member.

(c) The chief appraiser, in appraising property owned by a member of a qualified nonprofit homeowners' organization who is entitled to the use and enjoyment of facilities owned by the organization, shall consider the enhanced value of the property resulting from the member's right to the use and benefit of those facilities.

(d) An organization qualifies as a nonprofit homeowners' organization under this section if:

(1) it engages in residential real estate management;

(2) it is organized and operated to provide for the acquisition, construction, management, maintenance, and care of property nominally owned by the organization and held for the use, benefit, and enjoyment of its members;

(3) 60 percent or more of the gross income of the organization consists of amounts received as membership dues, fees, or assessments from owners of residences or residential lots within an area subject to the jurisdiction and assessment of the organization;

(4) 90 percent or more of the expenditures of the organization is made for the purpose of acquiring, constructing, managing, maintaining, and caring for the property nominally held by the organization;

(5) each member owns an easement, a license, or other non-revocable right for the use and enjoyment on an equal basis of all property nominally owned by the organization even if the right is subject to a restriction imposed by the instruments conveying the right or interest or granting the easement or subject to a rule, regulation, or bylaw imposed by the organization pursuant to authority granted by articles of incorporation, declaration of covenants, conditions and restrictions, the bylaws, or articles of association of the organization;

(6) net earnings of the organization do not inure to the benefit of any member of the organization or individual, other than by acquiring, constructing, or providing management, maintenance, and care of the organization's property or by a rebate of excess membership dues, fees, or assessments; and

(7) it qualifies for taxation under Section 1301 of the Tax Reform Act of 1976, Section 528 of the Internal Revenue Code of 1954, as amended, entitled "Certain Homeowners Associations."

Selected Case Citations

ALABAMA—*Lake Forest Property Owners Association* v. *Baldwin County Bd. of Equalization*, 587 So. 2d 393 (Ala. Civ. App. 1991).

ARIZONA—*Recreation Ctrs.* v. *Maricopa County*, 162 Ariz. 277, 782 P.2d 1170 (Ariz. Ct. App. 1986), vacated 162 Ariz. 281, 782 P.2d 1174 (Ariz.1989).

CALIFORNIA—*Smith* v. *Smith*, 21 Cal. App. 378, 131 P. 890 (Cal. App.1913).

COLORADO—*Colorado Arlberg Club* v. *Board of Assessment Appeals*, 719 P.2d 371 (Colo. Ct. App. 1986) reversed 762 P.2d 146 (Colo. 1988).

Devil's Thumb Townhouse Association v. *Boulder County Board of Equalization*, Board of Assessment Appeals, the State of Colorado, Docket No. 437, Nov. 26, 1974.

CONNECTICUT—*Pepe* v. *Board of Tax Review*, 585 A.2d 712 (Conn. Super. Ct. 1990).

FLORIDA—*Department of Revenue* v. *Morganwoods Greentree, Inc.*, 341 So. 2d 756 (Fla. 1976).

ILLINOIS—*Lake County Bd. of Review* v. *Property Tax Appeal Bd.*, 91 Ill. App. 3d 117, 46 Ill. Dec. 451, 414 N.E.2d 173 (Ill. App. Ct. 2d Dist. 1980).

400 Condominium Association v. *Tully*, 79 Ill. App. 3d 686, 398 N.E.2d 951 (Ill. App. Ct. 1st Dist.1979), cert. den. 101 S. Ct. 1973, 451 U.S. 907 (1979).

Cambridge-on-the-Lake Homeowners Association v. *Hynes*, 116 Ill. App. 3d 63, 452 N.E.2d 37 (Ill. App. Ct. 1st Dist.1983).

Stuart Town Homes Corp. v. *Rosewell*, 176 Ill. App. 3d 59, 125 Ill. Dec. 637, 530 N.E.2d 1046 (Ill. App. Ct. 1st Dist.1988).

KANSAS—*Quivira Falls Community Association* v. *Johnson County*, 634 P.2d 1115 (Kan. 1981).

MARYLAND—*Supervisor of Assessments* v. *Bay Ridge Properties*, Inc., 270 Md. 216, 310 A.2d 773 (1973).

MASSACHUSETTS—*Lodge* v. *Swampscott*, 216 Mass. 260, 103 N.E. 635 (1913).

MICHIGAN—*Lochmoor Club* v. *Grosse Pointe Woods*, 10 Mich. App. 394, 159 N.W.2d 756 (1968).

Deerfield Village Community Association v. *West Bloomfield Township*, 25 Mich. App. 138, 181 N.W.2d 62 (1970).

MINNESOTA—*Alvin* v. *Johnson*, 241 Minn. 257, 63 N.W.2d 22 (1954).

Preserve Association v. *Eden Prairie*, 421 N.W.2d 419 (Minn. Ct. App. 1988).

NEBRASKA—*Beaver Lake Association* v. *County Bd. of Equalization*, 210 Neb. 247, 313 N.W.2d 673 (1981).

NEVADA—*Sun City Summerlin Community Association* v. *State by and through its Department of Taxation*, 113 Nev. 835, 944 P.2d 234 (Nev. 1997).

NEW HAMPSHIRE—*Gowen* v. *Swain*, 90 N.H. 383, 10 A.2d 249 (1939).

Locke Lake Colony Association, Inc. v. *Barnstead*, 489 A.2d 120, (1985).

Waterville Estates Association v. *Town of Campton*, 122 N.H. 506, 446 A.2d 1167 (1982).

LSP Association v. *Town of Gilford*, 142 N.H. 369, 702 A.2d 795 (1997).

NEW JERSEY—*Englewood Cliffs* v. *Estate of Allison*, 69 N.J. Super. 514, 174 A.2d 631 (N.J. Super. Ct.1961).

NEW MEXICO—*Alamogordo Improvement Co.* v. *Prendergast*, 43 N.M. 245, 91 P.2d 428, (N.M. 1939).

NEW YORK—*People ex rel. Poor* v. *Wells*, 200 N.Y. 518, 93 N.E. 1129 (1910).

People ex rel. Topping v. *Purdy*, 143 App. Div. 389, 128 N.Y.S. 569, affirmed 202 N.Y. 550, 95 N.E. 1137 (1911).

Tax Lien Co. v. *Schultze*, 213 N.Y. 9, 106 N.E. 751 (1914).

Crane-Berkley Corp. v. *Lavis*, 238 A.D. 124, 263 N.Y.S. 556 (2d Dept. 1933).

People ex rel. Larchmont Manor Park Society v. *Smith*, 268 App. Div. 997, affirmed 294 N.Y. 920 63 N.E.2d 116 (1945).

Grasser v. *Graham*, 411 N.Y.S.2d 836 (1978).

Mountain Meadows Campers Association, Inc. v. *Pilkington*, 86 N.Y.2d 849, 657 N.E.2d 495, 633 N.Y.S.2d 474 (1995).

OHIO—*Beckett Ridge Association No. I* v. *Butler County Bd. of Revision*, 1 Ohio St. 3d 40, 437 N.E.2d 601 (1982).

Muirfield Association v. *Franklin County Bd. of Revision*, 73 Ohio St. 3d 710, 654 N.E.2d 110 (1995).

OREGON—*Tualatin Development Co.* v. *Department of Revenue*, 256 Or. 323, 473 P.2d 660 (1970).

Brooks Resources Corp. v. *Department of Revenue*, 276 Or. 1177, 558 P.2d 312 (1976).

PENNSYLVANIA—*Tide-Water Pipe Co.* v. *Bell*, 280 Pa. 104, 124 A. 351 (1924).

County of Monroe v. *Pinecrest Dev. Corp.*, 98 Pa. Commw. 200, 510 A.2d 1274 (1986).

Timber Trails Community Association v. *County of Monroe*, 150 Pa. Commw.29, 614 A.2d 342 (1992).

SOUTH CAROLINA—*Long Cove Home Owners' Association* v. *Beaufort County Tax Equalization Bd.*, 327 S.C. 135, 488 S.E. 2d 857 (S.C.1997)

TEXAS—*Waterwood Improv. Association, Inc.* v. *San Jacinto County Appraisal Review Bd.*, 697 S.W.2d 834 (Tex. App. Beaumont 1985).

UTAH—*Hayes* v. *Gibbs*, 110 Utah 54, 169 P.2d 781 (1946).

VIRGINIA—*First Merchants Nat'l Bank* v. *County of Amherst*, 204 Va. 584, 132 S.E.2d 721 (1963).

Lake Monticello Owners' Association v. *Ritter*, 229 Va. 205, 327 S.E.2d 117 (1985).

WASHINGTON—*Twin Lakes Golf & Country Club* v. *King County*, 87 Wn.2d 1, 548 P.2d 538 (1976).

Sahalee Country Club, Inc. v. *I, 108 Wn.2d 26*, 735 P.2d 1320 (1987).