

## Saw Creek v Pike County This was decided in the State Supreme Court-2005

Saw Creek Estates is a planned community in Pike County and Monroe County, Pennsylvania, created pursuant to the Pennsylvania Uniform Planned Community Act . The Association is a nonprofit corporation organized by the homeowners in Saw Creek to manage Saw Creek's affairs. See [68 Pa.C.S. § 5301](#). Saw Creek primarily consists of townhouses, which are independently owned by homeowners in Saw Creek. The community, however, also includes: roads; ponds; green areas; tennis courts; a pool; a clubhouse; a water tower; a well house; a community building in which there are various recreational facilities, a meeting room, and a restaurant; and a single-story building in which there is a real estate sales office.

All of the latter property is owned by the Association, rather than by individual homeowners, but it may nevertheless be used by any of Saw Creek's owners

Prior to the 2000-2001 tax year, the Board reassessed the value of properties within Saw Creek. In doing so, it determined that the roads, ponds, green areas, water tower, and well house, as well as the community building's recreational facilities and meeting room, qualified as "common facilities" of Saw Creek. The Board then found that these facilities were exempt from separate assessment and taxation as common facilities based on section 5105(b)(1) of the Act, which directs that "no separate assessed value shall be attributed to and no separate tax shall be imposed against common facilities. . . ." SO FAR SO GOOD

In contrast, the Board found that the restaurant and sales office did not qualify as common facilities under [section 5103](#), and therefore, had to be separately assessed and taxed. Consequently, the Board assessed the restaurant as having a value of \$142,190 and the sales office as having a value of \$33,480.

The Association filed an appeal with the Board, arguing that the restaurant and sales office, like the roads, ponds, green areas, etc., were common facilities, and thus not subject to separate assessment and taxation. The Board, however, denied the Association's appeal. The Association paid the tax due on the restaurant and sales office under protest. The trial court agreed with the Board but then it went to Commonwealth court and to the state supreme court

The Association then appealed to the trial court. During the hearing, Nicholas Mazzarella, the general manager of the Association, testified that although the Association owned the property on which the restaurant was located, it had leased that property to a private entity for the express purpose of operating a restaurant. Mr. Mazzarella explained that this arrangement was financially beneficial to the Association because it would lose money if it operated the restaurant on its own. Mr. Mazzarella further testified that although the restaurant was open to the public, it was considered a benefit to the residents of Saw

Creek, as they were the primary patrons of the restaurant and received a 10% discount on their meals there.

Moreover, Mr. Mazzarella stated that the rent that the restaurant operator paid to the Association went into a general fund to reduce the dues assessed against the Saw Creek homeowners for the common facilities.

The lease agreement between the Association and the restaurant operator required the operator to pay the Association \$1,000 a month to use the Association's property and to assume responsibility for all expenses affiliated with the restaurant.

With regard to the sales office, Mr. Mazzarella testified that the Association leased the single-story building in which the sales office was located to a private real estate company, which used the building for the express and exclusive purpose of managing Saw Creek real estate transactions. Mr. Mazzarella further explained that the sales office, like the restaurant, was a benefit to Saw Creek homeowners because they could use the office to list their property for sale or rental.

According to the lease agreement between the Association and the real estate company, the company was generally responsible for paying to the Association yearly rent in an amount equaling 10% of the gross commissions that the company received through transactions involving Saw Creek homes, which included any sales, rentals, or construction contracts.

This from the Supreme Court decision: In so contending, the Board again totally disregards the plain and unambiguous language in the definition of "common facilities," which does include a specific use of the real estate as one of its required components. Unlike the cases relied on by the Board and the trial court, this matter does not involve the issue of whether the *public property was used for the public purpose* for the tax exemption purposes. Thus, the holdings in those cases are irrelevant and inapplicable to the interpretation of the specific statutory definition of common facilities involved in this matter.

Thus, we conclude that the Commonwealth Court properly determined that the restaurant and sales office are common facilities and are thereby exempt from separate assessment and taxation pursuant to section 5105(b)(1) of the Act. Moreover, we hold that the Saw Creek homeowners retained appurtenant interests in the restaurant and sales office even though the association leased those facilities to private parties and did not keep them open for the homeowners' free and unfettered use.

#### ORDER

AND NOW, this 4th day of October, 2002, the order of the Court of Common Pleas of Pike County in the above-captioned matter is reversed. The County of Pike is directed to refund

the real property taxes paid by Saw Creek Estates Community Association, Inc. for the tax year 2000 on the properties subject to this appeal.

The decision is consistent with the principle that in these planned communities the common area amenities are not separately taxed to the association but rather they are to be taxed to the unit owners who have the right to use and enjoy the common areas. The question is when HOA takes possession of a property today does the assessment office have the responsibility to change to assessment of each of the unit owners???