

community interests

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Making Sense of HOA Property Taxes

By Paul Bancroft, Esq.

Property Tax on Common Elements: Where is the tax assessed?

Associations often hold and manage common elements for the benefit of the property owners in their communities. The common elements range from parks and pathways, swimming pools, recreation centers, and golf courses. Or, in multi-story communities, the common elements might consist of parking areas, interior hallways, and elevators. These common elements are subject to property tax, but it is often a hidden tax, making it difficult to identify, and, if appropriate, challenge.

Consequently, there are two steps involved in evaluating and managing property tax assessed on common elements. First, there must be an understanding of what properties are owned by the association and where the tax on that property is being assessed. Second, the valuation of the properties must be evaluated to ensure it is fair and equitable.

Historically, the tax on a common element was assessed to the association that owned the common element. This created a direct connection between the property being assessed and the amount of the tax. An association could monitor the tax assessed from year-to-year, and because it could tie the assessment to a particular common element, the association could judge whether the tax and the value on which it was based were fair and equitable.

The legislature changed the method of assessing common elements in 2005. At that time, it directed assessors to, whenever possible, divide the value of common elements among the homeowners in the community. Each homeowner's share of the common elements is added to the tax bill for the parcel they own. In other words, even though the common elements are owned by the association, the tax on the property is assessed directly to the homeowners in the community.

This allocation shifts the burden of paying the tax to the homeowners who benefit from the common elements. But, it also complicates the association's responsibility of evaluating whether the tax is fair and reasonable, and, if appropriate, challenging it. Assessors' records often indicate that specific common element parcels have no value, when in fact that value is tallied with the value of other common element parcels and then allocated among homeowners in the community. The homeowners see the apportioned tax added to their bills, but no one sees the total tax being assessed or the value on which it is based.

To bring clarity to the tax treatment of its common elements, an association should take the following steps. First, identify all common elements (by assessor parcel number) owned by the association. Second, determine if the taxes on any of the parcels are still being billed to the association. If any are billed to the association, the tax amounts and the values on which the taxes are based should be readily ascertainable from information available on the websites of the assessor or treasurer. For these parcels, the association may want to consider providing the assessor the information necessary for future taxes to be billed directly to the homeowners in the community. Third, identify those parcels whose values are being tallied with the value of other common elements and allocated among homeowners in the community. The valuation and allocation information for these parcels is not available online, but should be available from the county assessor. With this information, an association is in position to evaluate whether the valuation of the common elements is fair and equitable.

Property Tax on Common Elements: Is the valuation fair and equitable?

Common elements held by an association, such as parks, swimming pools, recreation centers, and golf courses are subject to property tax. In some instances that tax is assessed to the association which owns the common element, while in other instances the tax is assessed directly to the homeowners in the community. I have already discussed how this allocation of tax among



homeowners can hide the tax, making it more difficult to monitor. But, regardless of where the tax is assessed, it is the responsibility of the association, as the property owner, to monitor the assessment of its property, and, if appropriate, challenge the valuation on which the tax is based. Here is what you need to know to ensure that the valuation of the common elements in your community are fair and equitable.

Common elements are typically subject to restrictions which ensure the property is preserved for the benefit of homeowners in the community. Common elements usually cannot be sold or developed for residential or commercial use. Restrictions might ensure access by homeowners, preserve open space or limit property to a recreational use. While each of these restrictions affects the use of the particular parcel, the restrictions also impact the value of the parcel and should be considered during the assessor's appraisal process.

Assessors value common elements by adding together two values: one for the land and one for improvements constructed on the land. Assessors typically assign a nominal value to the land component. This reflects the fact that the use and alienability of the common elements are restricted.

Improvements on a parcel include the items constructed on the land such as a clubhouse, tennis court or the tee boxes, fairways and greens of a golf course. These improvements are valued using a statutory replacement cost approach. Under this approach, the assessor estimates the current cost of replacing the improvement and then applies a statutory rate of depreciation. This is the same methodology used by the assessor to value all other property in the county. Typically, assessors make no adjustment for obsolescence attributable to restrictions on the use and alienability of common elements.

However, in cases concerning the valuation of common elements located in Sun City Summerlin, the Nevada Supreme Court held that restrictions on the use of a common element are relevant to the valuation of the common element. While the presence of restrictions on use does not render the common element valueless or justify assignment of a "flat, arbitrary value," the restrictions must be considered during the valuation process. This is no different than other types of property that are subject to restrictions.

For example, property which has been dedicated for use as low-income housing is generally subject to restrictions that limit the pool of potential tenants and the amount of rent that can be charged. When the impact of these restrictions on use has been quantified through accepted approaches to valuation, it has resulted in a reduction of the property's taxable value. A similar approach can be taken for common elements.

The cases involving Sun City Summerlin support the proposition that restrictions on use and alienability must be considered in determining value. These types of restrictions have not typically been considered in the past, and to do so now, should result in lower values. But, to succeed, the impact these restrictions have on value must be quantified through standard approaches to valuation. With the benefit of these cases and a well-crafted appraisal, successful appeals challenging the valuation of common elements can be achieved.

In summary, regardless of where the tax is assessed, an association should review the valuation of all common elements it owns to ensure the values on which the assessments are based are fair and equitable. The land area of a common element should be assigned a nominal value; if it's not, consider questioning the valuation. Similarly, consider asking that the value assigned to improvements be adjusted to account for restrictions on use and alienability. If these questions are not answered to your satisfaction, a valuation appeal may be appropriate. 🏠



Paul Bancroft, Esq. attorney in the tax group at McDonald Carano.

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The 2018 CAI Annual Conference and Exposition will be held May 9–12 at the Marriott Wardman Park Hotel in Washington, DC.

The Conference and Exposition provides education sessions on operations, leadership, innovative business practices, and new products and technologies. Industry professionals and homeowner volunteer leaders from around the world come together to discuss critical issues, network, and learn about the latest community association trends.

Go to the link below to see the schedule.

www.caionline.org/Events/2018Conference/Pages/Schedule.aspx 🏠