

**TO:** Cloverdale HOA – Meeting 1/11/2012  
**FROM:** Nance Briscoe, Lot 9  
22 Cloverdale Place – 304.728.2201 briscoen@frontiernet.net  
and EPOHOA Membership Chairman

Status on Common Area Taxation –

Finally something positive! Angie banks returned my call just now and she definitely recognizes that Cloverdale is indeed protected under 36B UCIOA and our common area tax to be exonerated!!!!!!

Also Angie is very interested in the number & name of the of the HOAs in Jefferson County for their 36B status as well - Angie has yet to receive anything concerning her letter to a lot of us last year mentioning a taxability ruling from the State Tax Commissioner - the response was due in Feb. 2011 - I am visiting with Angie after the JCC meeting tomorrow for Cloverdale and explaining what EPOHOA is - she is VERY interested as is Stephanie Groh.

I also shared that EPOHOA has in-process data in support of HOAs built pursuant to 36B that could also be exonerated - Angie will most likely have Jennifer Syron and myself come in and share that information - we briefly spoke about this.

In a nutshell I believe Angie is taking a positive step on behalf of HOAs in Jefferson County (and it may make her office a leader for the Eastern Panhandle) for tax exoneration from her conversation this afternoon - her call was pleasant and I was very appreciative of her time.

The Common Area is made up of the following:  
4.5 miles of roads (roads average of 28 feet wide)  
3.5 acre flood plain  
10 feet both sides of the road for common area landscaping  
1/3 acre total for entrance signage  
mailbox cluster/building  
street/directional signage  
school bus shelter(s)  
*total common area = 30.015 acres*

*“... common elements in Cloverdale Heights Subdivision to include, but not limited to the streets, roads, common areas, sign easements, utility easements and storm water management easements...”*

Attached previous correspondence with Angie Banks - also available on CloverdaleHOA.com and EPOHOA.org -

# COMMON AREA TAX

## **Cloverdale was created pursuant to UCIOA 36B**

*(36B was recognized by Jefferson County in 1972)*

10/18/1988 quote from the first paragraph of Cloverdale's DCCR: "... to the provisions of the Uniform Common Interest Ownership Act, West Virginia Code section 36B-1-101, et seq. ("Act") for the purpose of creating Cloverdale Heights ... "

West Virginia §36B-1-105. Separate titles and taxation.

(a) In a cooperative, unless the declaration provides that a unit owner's interest in a unit and its allocated interests is real estate for all purposes, that interest is personal property. (That interest is subject to the provisions of all homestead exemptions from taxation provided by law, even if it is personal property.)

(b) In a condominium or planned community:

### **FACT: Cloverdale is a Planned Community.**

1. **If** there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.

2. **If** there is any unit owner other than a declarant, each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements for which a declarant has reserved no development rights.

**FACT: each Unit in Cloverdale IS assessed with a separate tax**

*and*

**FACT: the Common Area in Cloverdale IS assessed with a separate tax.**

**FACT: the Declarant, Marcus Enterprises, reserved no development rights.**

(c) Any portion of the common elements for which the declarant has reserved any development right must be separately taxed and assessed against the declarant, and the declarant alone is liable for payment of those taxes.

(d) If there is no unit owner other than a declarant, the real estate comprising the common interest community may be taxed and assessed in any manner provided by law.

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*The following is a direct quote from the Jefferson County Assessor – Angie Banks in reply to 9/9/2010 e-mail that follows (emphasis in **bold** and [bracketed comments] added.)*

—— Original Message ——

Subject: Re: Fwd: Property Tax Notice Request  
Date: Wed, 15 Sep 2010 13:42:12 GMT  
From: Assessor's Office <Assessor@jeffersoncountywv.org>  
To: <briscoen@frontiernet.net>  
CC: <lynwidmyer@gmail.com>

Nance,

I will check with my attorney, but from my understanding a development has to be created under the UCIOA.

Mr. Hamstead told the Judge that Crystal Lakes Subdivision was created under the UCIOA.

First, *the common areas of a development are not exempt.*

HOWEVER, if the development was *created pursuant to the Uniform Common Interest Ownership Act (UCIOA)*, then the *common areas must be valued, then divided by the number of unites* (lots or condo units) and *then proportionally added to each unit.*

In that case, there is not a separate assessment for the common areas, but rather *the value is included in each lot owners value proportionally.*

If the development was not created pursuant to UCIOA (and most were not), then we assess the common areas to (streets, parks, etc.) to whoever owns them, either the developer or the Homeowners Association.

The *burden is on the taxpayer to prove that they were created pursuant to UCIOA.*

[Cloverdale was created pursuant to 36B - 10/18/1988 *quote from the first paragraph of Cloverdale's DCCR: "... to the provisions of the Uniform Common Interest Ownership Act, West Virginia Code section 36B-1-101, et seq. ("Act") for the purpose of creating Cloverdale Heights ..."*]

I did recently submit for a taxability ruling to the State Tax Commissioner, but the legal division has until February, 2011 to rule on the request.

[no further reply from Angie Banks, Assessor about a ruling as of 9/14/2011]

I will check with my attorney and get back with you.

[no further reply from Angie Banks, Assessor about a ruling as of 9/14/2011]

I know that this has been an ongoing issue in many counties of WV.

Angela L. Banks  
Jefferson County Assessor

104 E. Washington St.  
Charles Town WV 25414

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The following e-mail was sent to:  
<angiebanks08@ . . . > and <angiebanks08@ . . . >

No e-mail address stated on her business card.

During the last JCC mtg. on 9/9/2010 you provided a list of exonerations concerning taxes – your announcement stimulated me to provide you with important information you may not be aware of.

The Jefferson County Organization of HomeOwners Associations (JCOHOA) wants to be sure you have the latest court order for HOA Common Grounds Property Tax.

This Court Order has not been fairly publicized as it should have been nor have you exonerated these related property tax assessments at a JCC meeting to our/my knowledge.

I've not seen anything related [sic] to the Assessors' notice in the papers either regarding this issue.

I have attached the 2009 Court Order Civil Action No. 09-C-117 and the JCOHOA e-card that is being circulated throughout Jefferson County and beyond.

This Court Order is a decision based upon the existing WV law, e.g., Uniform Common Interest Ownership Act, Chapter 36B (WV revised 36B in 2006, 2007, 2008 and again in 2009).

While this specific Court Order states no reimbursement of prorating of back taxes obtained thru the Assessor's office for Crystal Lakes HOA we request that the tax be made public and that futher tax not be invoiced to all compliant HOAs in the state of WV.

We ask that the findings become the fact that you provide at meetings and promote in documentation.

The 55 counties in WV must be aware and together we will promote further education to HOAs across the state.

Tucking documents away for safekeeping is nice but educating our public is profound!

Respectfully, Nance L. Briscoe, Membership,  
Jefferson County Organization of Homeowner Associations (JCOHOA)  
The JCOHOA is a 501(C)(3) non-profit organization, the website is at JCOHOA.org  
CC: Lyn Widmyer, Jefferson County Commissioner, and JCOHOA

*UPDATE:* June 2011, JCOHOA memberships increased dramatically across WV County lines and has since changed its name to the **Eastern Panhandle Organization of Homeowner Associations, Inc.** (EPOHOA) certified and registered with the WV Secretary of State. **EPOHOA incorporated the eight (8) counties of the Eastern Panhandle:** *Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral, Morgan and Pendleton.*