

April 27, 2011

Mr. Craig Bartoldson, Publisher
Martinsburg Journal
207 W. King Street
Martinsburg, WV 25402-0807

Dear Mr. Bartoldson,

Thank you for your time – please print my complete article in your paper. In the future you might consider an HOA column.

It doesn't matter if the tax is one cent or thousands of dollars. The issue is the existing law - and the actions of our elected Assessor concerning the value of mandated self-sufficient HOAs in Jefferson County.

If you can't flip a house because the market is down – flip HOA common areas within an established HOA instead.

Jefferson County WV has an accumulation of 8,000 sold lots within established Homeowner Associations totalling more than 214 miles roads. HOAs were built to be self sufficient and that's quite a financial savings to just one of the 55 counties in WV, as well as West Virginia as a whole.

HOAs receive no benefits or representation from any source in the county or state. HOAs have but one protection – §36B the Uniform Common Interest Ownership Act (approved and adopted in WV 1984 and the requirement of §36B-1-203 of the Code of West Virginia, 1931as amended).

Thankfully, at least 8,000 HOA members retain their constitutional right to register & vote.

However, our County Assessor, in my opinion, does not understand the tax law relative to HOA common elements, also known as common areas. Tax is assessed and billed for those common areas and the individual lots/properties.

I quote 9/15/2010 Angie Banks, Jefferson County Assessor:

“If the development [an HOA] was created pursuant to the Uniform Common Interest Ownership Act (UCIOA), then the common areas must be valued, then divided by the number of units (lots or condo units) and then proportionately added to each unit. In that case there is not a separate tax assessment for the common areas, but rather the value is included in each lot owners value proportionally.

If the development [an HOA] 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.” End quote.

As an elected official the burden of proof should be the Assessor's obligation in order to fairly tax anyone for any property in any year! All tax payers have until March 31st of that tax year to appeal the tax assessment.

The following scenario is true:

Several Jefferson County HOAs know and have proven that they should not be paying tax assessed based upon their common areas. But it just doesn't seem to matter.

Result: the HOAs do not pay that tax. The Common Areas go on the Assessor's auction block and are sold. The HOA no longer owns them, maintaining common areas are now the responsibility of the new owner – remember that could be more than 214 miles of common area HOA roads.

Why would any HOA continue paying their Annual Dues to maintain sold common areas to someone who does not own a unit – membership to an HOA is exclusive to unit owners. HOA governing documents, the Declaration of Covenants, Conditions & Restrictions, are based on mandatory annual dues to maintain common areas.

The property is then resold BACK to the HOA with interest after 18 months or sooner – whenever and IF the HOA can raise the money to buy back their property.

The law that is relative protecting HOAs is WV Code 36B-1-105(2) Separate Titles & Taxation cited one more time by the Honorable David H. Sanders, Jefferson County Circuit Court. He declared again that HOA common elements/areas void and set aside commencing with the tax year 2009. That case is Civil Action No. 09-C-117.

Oh and don't forget, HOAs must also raise more membership money and pay an attorney to fight the issue – what a whopping financial boon for the Assessor, the County, the State and the attorneys all on the backs of the HOA lot/unit owners. Who wins? They do. Who seems to be the never ending source of money? HOAs!

So in today's sour market of flipping houses it appears to be a better money making venture by flipping common areas! (Hmmm, will the new owner of common areas pay for snow plowing more than 214 miles of roads if this gets out of hand! I bet not.)

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Just so you know, I am an owner in an established HOA in Jefferson County, WV. Our HOA pay their tax assessment every year, our common areas have never been sold.

Thank you again,



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