

HAMSTEAD & ASSOCIATES, L.C.
ATTORNEYS AT LAW

RICHARD A. SUSSMANN (WV)

1802 W. KING STREET
MARTINSBURG, WEST VIRGINIA 25401
(304) 262-8390
FAX: (304) 262-8394
E-MAIL: HAMSTEAD@HAMSTEADANDASSOCIATES.COM

MARCH 30, 2009

Laura Rattenni, Clerk
Jefferson County Circuit Court
119 George St.
Charles Town, WV 25414

Re: Crystal Lakes Homeowners Association v. Christopher G. Morris,
State Tax Commissioner of the State of West Virginia
Our File #6778

Dear Laura:

Please find the following documents for filing in the above captioned matter:

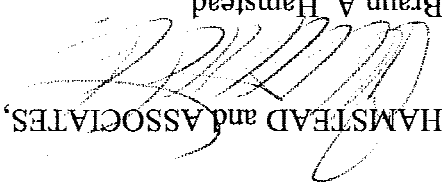
1. Original and one copy of the Civil Case Information Statement;
2. Original and 2 copies of the Summons to be served by Sheriff of Kanawha County;
3. Original and 3 copies of the Petition for Writ of Certiorari;
4. Order Setting Petition for Writ of Certiorari;
5. Original and one copy of the Notice of Filing Order Setting Petition for Writ of Certiorari;
6. Our check in the amount of \$145.00 made payable to the Clerk, Circuit Court of Jefferson County; and
7. Our check in the amount of \$25.00 made payable to the Sheriff of Kanawha County.

Also enclosed is a copy of the Petition which I would respectfully request be returned to us with a time/date stamp showing when it was entered on the docket. I have enclosed self addressed stamped envelope for this purpose.

March 30, 2009

Should you have any questions, please feel free to give me a call. Thank you for your assistance.

Respectfully submitted,

HAMSTEAD and ASSOCIATES, L.C.

Braun A. Hamstead

BAH/jah

encls.

cc: Crystal Lakes Homeowners Association

X:\Crystal Lake-6778\Tax Appeal 2009\ltr to clerk 3-30-09.wpd

I. CASE STYLE:

Plaintiff

Case # 09-C-_____

CRYSTAL LAKES HOMEOWNERS ASSOCIATION

vs.

Defendant

Christopher G. Morris, State Tax Commissioner
of the State of West Virginia
State Capital Building
1900 Kanawha Blvd.
Charleston WV 26305

Days to Answer	Type of Service
20	Sheriff, Kanawha Co.

Original and 1 copy of complaint enclosed/attached.

DEFENDANT: Christopher G. Morris, State Tax Commissioner State of West Virginia	
---	--

II. TYPE OF CASE:

- | | |
|--|--|
| ☐ General Civil | ☐ Adoption |
| ☐ Mass Litigation
(As defined in T.C.R. Rule XIX(x)) | ☒ Administrative Agency Appeal |
| ☐ Asbestos | ☐ Civil Appeal from Magistrate Court |
| ☐ Carpal Tunnel Syndrome | ☐ Miscellaneous Civil Petition |
| ☐ Diet Drugs | |
| ☐ Environmental | ☐ Mental Hygiene |
| ☐ Industrial Hearing Loss | ☐ Guardianship |
| ☐ Silicone Implants | |
| ☐ Other: _____ | ☐ Medical Malpractice |
| ☐ Habeas Corpus/Other Extraordinary Writ | |
| ☐ Other: _____ | |

III. JURY DEMAND: ☐ Yes ☒ No

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): June / 2009

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO DISABILITY? ☐ Yes ☒ No
IF YES, PLEASE SPECIFY:

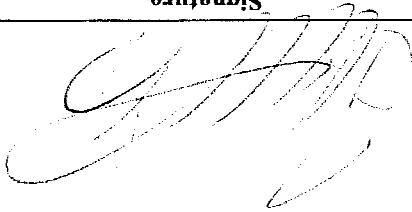
- | |
|--|
| ☐ Wheelchair accessible hearing room and other facilities |
| ☐ Interpreter or other auxiliary aid for the hearing impaired |
| ☐ Reader or other auxiliary aid for the visually impaired |
| ☐ Spokesperson or other auxiliary aid for the speech impaired |
| ☐ Other: _____ |

Attorney Name: Braun A. Hamstead, Esquire
Firm: HAMSTEAD & ASSOCIATES, L.C.
Address: 1802 W. King Street, Martinsburg, WV 25401
Telephone: 304-262-8390
Dated: March 30, 2009

Representing:

- | |
|---|
| ☒ Plaintiff |
| ☐ Cross-Complainant |
| ☐ Cross - Defendant |
| ☐ Defendant |

Signature



☐ Proceeding Without an Attorney

CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

CIVIL ACTION NO. 09-C-_____

CRYSTAL LAKES HOMEOWNERS ASSOCIATION,

Petitioner,

v. Summons: Sheriff of Kanawha County

Christopher G. Morris, State Tax Commissioner

of the State of West Virginia,

Respondent.

To the following: Christopher G. Morris, State Tax Commissioner

of the State of West Virginia
State Capital Building

1900 Kanawha Blvd.
Charleston WV 26305

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby Summoned and required

to serve upon Braun A. Hamstead, Esquire and Hamstead and Associates, L.C., Plaintiff's attorney

whose address is 1802 W. King Street, Martinsburg, WV 25401, an answer including any related

counterclaim you may have to the complaint filed against you in the above styled civil action, a true copy

of which is herewith delivered to you. You are required to serve your answer within 30 days after service

of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will

be taken against you for the relief demanded in the complaint and you will be thereafter barred from

asserting in another action any claim you may have which must be asserted by counterclaim in the above

style civil action.

_____ Dated

Clerk of Court

_____ By _____
X:\Crystal Lake-6778\Tax Appeal 2009\summon 3-30-09.wpd

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

CRYSTAL LAKES HOMEOWNERS ASSOCIATION,
Petitioner,

v.

Christopher G. Morris, State Tax Commissioner
of the State of West Virginia,
Respondent.

PETITION FOR WRIT OF CERTIORARI

COMES NOW the Petitioner in this matter, for its Petition for Writ of Certiorari to be directed against Christopher G. Morris, State Tax Commissioner of the State of West Virginia, and says as follows:

I. NATURE OF CAUSE, STATEMENT OF JURISDICTION

1. This is an appeal from an adverse ruling of the Respondent Tax Commissioner dated February 27, 2009, a copy of which is made an Exhibit hereto. This Court therefore has jurisdiction pursuant to West Virginia Code § 11-3-25.

II. STATEMENT OF FACTS

2. It is not disputed that Petitioner holds record title to certain real estate located in Jefferson County, West Virginia, which is known as the Crystal Lake Recreational Reserve, and comprised of 14.17 Acres being Parcels 88 & 89 and 4.15 Acres being Parcel 90.

3. The Commissioner's ruling sets forth no disputed factual issues between Petitioner and Respondent. The Commissioner did not dispute that Crystal Lake Recreational Reserve is a *common element* in a planned community within the meaning of West Virginia Code §36B-1-

105. Nor did he argue that the Declarant reserves any future development rights.

4. Instead, the Commissioner merely used West Virginia Code §11-3-9 to support his

position that the real estate is taxable.

5. Crystal Lake subdivision has been sold out and there remains no reservation of any

development rights by the "Declarant." The Declarant sold all of its lots and has terminated any

future potential development rights.

III. STATEMENT OF APPLICABLE LAW

6. West Virginia Code §11-3-9(29) clearly exempts taxation of "any other property or

security exempted by any other *provision of law*."

7. West Virginia Code §36B-1-105(2), "Separate titles and taxation" (which pertains to

taxation of planned communities), clearly states that "no separate tax or assessment may be

rendered against any *common elements* for which a *declarant has reserved no development*

rights."

IV. STATEMENT OF GROUNDS FOR APPEAL

8. This appeal is based on the grounds that the Tax Commissioner erred in his ruling in

that he failed to consider West Virginia Code §36B-1-105 as a *provision of law*.

9. Even though, according to the Commissioner's own recitations, West Virginia Code

§11-3-9(29) clearly allows exceptions where "other property or security [is] exempted by any

other provision of law," the Commissioner's decision does not treat West Virginia Code §36B-1-

105 to be a *provision of law*.

10. West Virginia Code §36B-1-105 provides that "no separate tax or assessment may be

rendered against any *common elements* for which a declarant *has reserved no development rights*." Again, while the Commissioner does not dispute the fact that Crystal Lake Recreational Reserve is a "common element" which is not subject to further development, he refused to apply West Virginia Code §36B-1-105.

11. The Tax Commissioner erred, as a matter of law, in concluding that he "could find no merit in the assertion that [West Virginia Code §36B-1-105] exempts any property from ad valorem taxation. Since West Virginia Code §36B-1-105 is indeed a *provision of law* and since Crystal Lake Recreational Reserve is most definitely a "common element" which "has reserved no development rights," then the ruling of the Tax Commissioner must be reversed.

12. To the extent that any unstated adverse factual findings may have played a role in the Tax Commissioner's decision, Petitioner further assigns error to such findings of fact and incorporates herein the protest filed with the Tax Commissioner in the record below.

13. Crystal Lake Homeowners Association, a non-profit organization, has been unlawfully taxed on this planned community's common element.

WHEREFORE, Petitioner prays that this Petition be Ordered filed, that a Writ of

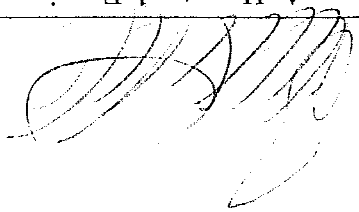
Certiorari issue, and that, after due consideration of the merits of this appeal, the aforesaid

Decision of the Tax Commissioner be reversed and Petitioner be granted such other and further

relief as shall be proper.

CRYSTAL LAKE HOMEOWNERS
ASSOCIATION, Petitioner

by Counsel



Braun A. Hamstead, Esquire
West Virginia State Bar ID No. 1568
Richard A. Sussmann, Esquire
West Virginia State Bar ID No. 10535
HAMSTEAD & ASSOCIATES, L.C.
Counsel for Petitioner
1802 W. King Street
Martinsburg, WV 25401
304-262-8390

X:\Crystal Lake-6778\Tax Appeal 2009\pet for appeal 3-30-09.wpd

STATE OF WEST VIRGINIA

COUNTY OF BERKELEY, to-wit:

Personally appeared before the undersigned authority, BRAUN A. HAMSTEAD,

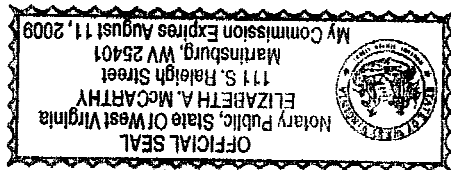
who being first duly sworn, deposes and says that he is counsel for the Petitioner in the foregoing **PETITION FOR WRIT OF CERTIORARI** and that the facts and allegations contained therein are true, except insofar as they are stated therein to be upon information and belief, and insofar as they are stated therein to be upon information and belief, he

believes them to be true.

Braun A. Hamstead

Taken, subscribed and sworn to before me this 30th day of March, 2009, by

Braun A. Hamstead.



My commission expires:

Aug. 11, 2009

X:\Crystal Lake-6778\Tax Appeal 2009\verification 3-30-09.frm

Notary Public

A handwritten signature in cursive script, appearing to read "Elizabeth A. McCarthy", written over a horizontal line.

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

CRYSTAL LAKES HOMEOWNERS ASSOCIATION,

Petitioner,

v.

Civil Action No. 09-C-_____

Christopher G. Morris, State Tax Commissioner
of the State of West Virginia,
Respondent.

ORDER SETTING PETITION FOR WRIT OF CERTIORARI FOR STATUS HEARING

Came the Petitioner, Crystal Lakes Homeowners Association, and tendered for filing its

dually verified Petition for Writ of Certiorari, and it appearing that the Petition is facially adequate
for the institution of these proceedings, said Petition is hereby **ORDERED** filed, and the Court
finds that this matter should be set down for an initial hearing to determine what proceedings

should be conducted by the Court hereunder, it is hereby, by the Court,

ADJUDGED and ORDERED that this matter is set down for a status conference on

_____, at the Jefferson County Circuit Court, 100 E.

Washington Street, 2nd Floor, Charles Town, West Virginia, at which time the Court will

consider the procedures to be conducted herein, including the request that a writ be issued for the
certification of the record of the proceedings before Respondent Tax Commissioner.

The Clerk shall enter the foregoing as and for the day and date first hereinabove written

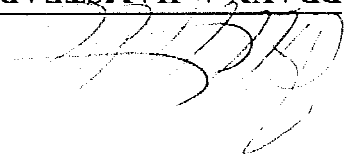
and shall forward an attested copy of this Order to Braun A. Hamstead, Esquire,

Hamstead & Associates, L.C., 1802 W. King Street, Martinsburg, WV 25401 and the Petitioner

shall serve same, along with the Notice, upon the Tax Commissioner at its address of State

Judge, Circuit Court of
Jefferson County, West Virginia

Submitted by:



BRAUN A. HAMSTEAD, Esquire

WV State Bar ID No. 1568

RICHARD A. SUSSMANN, Esquire

WV State Bar ID No. 10535

Counsel for Petitioners

HAMSTEAD & ASSOCIATES, L.C.

1802 W. King St.

Martinsburg, WV 25401

(304) 262-8390

X:\Crystal Lake-6778\Tax Appeal 2009\order setting petition 3-30-09.wpd

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

CRYSTAL LAKES HOMEOWNERS ASSOCIATION,

Petitioner,

v.

Civil Action No. 09-C-_____

Christopher G. Morris, State Tax Commissioner
of the State of West Virginia,
Respondent.

NOTICE OF FILING PETITION FOR WRIT OF CERTIORARI

TO: Ralph A. Lorenzetti

Prosecuting Attorney

Jefferson County, WV

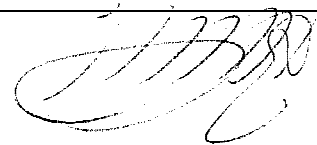
P.O. Box 729

110 N. George Street

Charles Town WV 25414

COMES NOW the Petitioner, AG/IRG WPM Ranson, LLC and hereto attaches its Petition for Writ of Certiorari and states that said Petition has been filed with the Circuit Court of Jefferson County asking for an appeal from an adverse ruling of the Respondent, Tax Commissioner, dated February 27, 2009.

CRYSTAL LAKES HOMEOWNERS
ASSOCIATION, Petitioner
by Counsel



Braun A. Hamstead, Esquire

West Virginia State Bar ID No. 1568

Richard A. Sussmann, Esquire

West Virginia State Bar ID No. 10535

HAMSTEAD & ASSOCIATES, L.C.

Counsel for Petitioner

1802 W. King Street

Martinsburg, WV 25401

304-262-8390

X:\Crystal Lake-6778\Tax Appeal 2009\notice of filing pet 3-30-09.wpd