

WISCONSIN SUPREME COURT HOLDS THAT DECLARED BUT UNBUILT CONDOMINIUM UNITS WERE “UNITS” FOR PROPERTY TAX PURPOSES

By Ryan D. Schuetz

On June 18, 2010, the Wisconsin Supreme Court, in *Saddle Ridge Corporation v. Board of Review for Town of Pacific*, decided the issue, “Who is responsible for paying property taxes on declared but unbuilt condominium units?” The Court held that a condominium “unit” that has been declared but not yet built, is still subject to a property tax assessment by statute, regardless of how the condominium declaration defines the term “unit.”

In this case, Saddle Ridge owned three condominiums and as of 2006, 41 condominium units were not yet built. The Town of Pacific assessed a property tax on the unbuilt units. Saddle Ridge contested the 2006 assessments, arguing that the condominium declarations provide the definition of a unit, which require a structure to be added to the land to be considered a unit. Saddle Ridge argued that without buildings, the tax parcels were only vacant land and that all of the land within the condominiums is part of the common elements, properly taxed to the owners of the built units.

The Court rejected Saddle Ridge’s argument, holding that the definition of a condominium “unit” under the Wisconsin Condominium Ownership Act does not require a physical structure to be in place, and the statutory definition trumps the definition in the condominium declarations. The Court explained that the property tax assessment was not for “vacant land,” or any land at all. The assessment was for “units” that Saddle Ridge owned.

Under Wis. Stat. § 703.07(1), the declared units come into legal existence when the condominium plat and declaration are properly recorded. The declaration must identify each unit in the condominium, and every unit shall be designated on the condominium plat by the unit number. Designating units creates tax parcels. *See* Wis. Stat. § 703.21(1). Neither the legal existence of the units nor their assessment value simply disappear until such time as construction is completed. Under Wis. Stat. § 703.02(15), declared but unbuilt condominium units are “units” for property tax purposes.

This decision stresses the importance of the careful planning that should be involved in the establishment of condominiums, and the need to understand how the Wisconsin Condominium Ownership Act impacts developers/owners in establishing and owning condominiums. If not planned properly, developers/owners establishing condominiums can have very serious tax consequences and holding costs if the declared units are not built and sold in a reasonable amount of time. Should you have any questions regarding this decision or how this decision impacts your establishment of condominiums, please do not hesitate to contact the real estate attorneys at Weld, Riley, Prenn & Ricci, S.C.

This article should not be construed as legal advice and is intended for general informational purposes only. If you have any questions, you should contact your legal counsel.

