[redacted]

[redacted]

SEP 2 4 1993

CERTIFIED MAIL

Dear Sir:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code and have determined that you do not qualify for tax exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The information submitted indicates the organization was formed to maintain and preserve the common areas and architectural integrity of homes and lots. Membership in the association is open to every owner of a lot which is subject to assessment.

The organization's income is derived from fees and assessments to homeowners, and investment income. Expeditures include expenses for lawn care, landscaping, legal, office and other organizational expenses; and miscellaneous expenses.

Section 501(c)(4) of the Code provides for the recognition of civic leagues, social welfare organizations, or other organizations, not organized for profit, but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Federal Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated for the purpose of bringing about civic betterment and social improvements.

[redacted]

Revenue Ruling 72-102, published in Cumulative Bulletin 1972-1 on page 149 states that a non-profit organization formed to preserve the appearance of a housing development and to maintain streets, sidewalks and common areas for use of residents is exempt under 501(c)(4). Membership is required of all owners of real property in the development and assessments are levied to support the organization's activities. It was held that by maintaining the property normally maintained by a municipal government the organization served the common good and general welfare of the community.

Revenue Ruling 74-99, published in Cumulative Bulletin 1974-1 on page 131, modified Revenue Ruling 72-102 by stating guidelines under which a homeowners association could qualify for exemption under section 501(c)(4) of the Code. One guideline is that a homeowners association must serve a community which bears a reasonable recognizable relationship to an area identified as governmental in order to qualify under section 501(c)(4).

This ruling reads in part: "A community within the meaning of section 501(c)(4) and the regulations is not simply an aggregation of homeowners bound together in a structural unit formed as an integral part of a plan for the development of a real estate division and the sale of homes therein. Although an exact delineation of the boundaries of a "community" contemplated by section 501(c)(4) is not possible, the term as used in that section has traditionally been construed as having reference to a geographical unit bearing a reasonable recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof."

In your response to our letter dated [redacted], you described the "common area" as,

(A) all grassy areas between the sidewalks and the street in front of each private residence

(B) the storm water management area, and

(C) the areas to the north and south of the entrance of the subdivision.

Your Declaration of Covenants, Conditions and Restrictions defines "common area" as all property (including the improvements thereto) owned by the association for the common use and enjoyment of the owners.

You stated that the Association is responsible for regular mowing, landscaping and maintenance of the grass, trees, flower beds which were planted by the builder in these areas. You also stated that the association does not conduct maintenance of sidewalks curbs, road surfaces or streetlights.

[redacted]

Revenue Ruling 74-99 states that "....Revenue Ruling 72-102 was intended only to approve ownership and maintenance by homeowners associations of such areas as roadways and parklands, sidewalks and street lights, access to or for the use and enjoyment of which is extended to members of the general public, as distinguished from controlled use or access restricted to the members of the homeowners association.

You indicated in your response that the "common areas" that you referred to, are accessible to the public with no restrictions to homeowners only. This contradicts that indicated in your Declaration of Covenants, Conditions and Restrictions, which provide "that owners may delegate his right of enjoyment to the common area and facilities to the members of his family, his tenants or contract purchasers residing on the property".

The diagram which you provided is that of a residential housing development. Entry to and exiting of the development may only be accomplished through one mean. There are no areas which are extended or accessible to the general public, or for their use and enjoyment.

The area served by your activities is a private residential housing development. Such an area does not constitute a "community" within the meaning of 501(c)(4).

Based on the information submitted, we have determined that your organization is operating in essentially the same manner as the organization described in Revenue Ruling 74-99.

The services constitute personal benefits to the members of the association and does not promote in some way, the common good and general welfare of the community. Any benefits to the community are not sufficient to meet the requirements of the regulations, that the organization be operated primarily for the common good and general welfare of the people of the community.

Your attention is called to section 528 of the Internal Revenue Code which was added by the Tax Reform Act of 1976. This section provides that, in certain circumstances, a non-exempt homeowners association may elect not to be taxed on its "exempt function income" which includes membership dues, fees or assessments from owners of real property. This filing requirement is currently in effect for your organization.

Therefore, we have concluded that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(4) of the Internal Revenue Code. In accordance with this determination you are required to file Federal income tax returns on Form 1120 or Form 1120H.

[redacted]

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, he or she will need to file a power of attorney or tax information authorization with us.

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination on this matter.

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[redacted]

District Director

Enclosure: Publication 892