

No. 31657 – *Maplewood Community, Inc. v. Rebecca Melton Craig, State Tax Commissioner and Cheryl L. Romano, Assessor of Harrison County*

FILED

December 23, 2004

Starcher, J., concurring:

released at 10:00 a.m.

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

I concur in the majority’s reasoning and holding.

I write separately to point out that the estate in land that is created in the living units in the instant case is a hybrid. This estate in land is unlike traditional fee ownership, and also unlike a traditional leasehold or rental estate.

Because these living units do not fit well into traditional categories of estates in land, it is difficult to apply traditional analyses to their tax status – *i.e.*, are they to be taxed as “rental” or “owner-occupied”? (To my thinking, they are more like owner-occupied).

The Legislature probably should speak to this issue, for the guidance of taxing authorities, investors, residents, and developers.

Accordingly, I concur.