



**FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD**

APPELLANT: Royal Tee LLC
DOCKET NO.: 11-03322.001-C-3 through 11-03322.002-C-3
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Royal Tee LLC, the appellant, by attorneys Franco A. Coladipietro and Anthony M. Farace of Amari & Locallo in Bloomingdale; and the DuPage County Board of Review.

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds no change in the assessment of the property as established by the **DuPage** County Board of Review is warranted. The correct assessed valuation of the property is:

FAIR CASH VALUE ASSESSMENT

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
11-03322.001-C-3	05-06-209-018	95,814	0	\$95,814
11-03322.002-C-3	05-06-405-014	317,952	543,717	\$861,669

OPEN SPACE ASSESSMENT¹

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
11-03322.001-C-3	05-06-209-018	95,814	0	\$95,814
11-03322.002-C-3	05-06-405-014	284,970	543,717	\$828,687

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from decisions of the DuPage County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessments for the 2011 tax year. The Property Tax Appeal

¹ PIN 05-06-209-018 assessment is reflective of fair cash value only while the assessment for PIN 05-06-405-014 is reflective of only .33 acres of the 3.02 acre parcel receiving the open space preferential assessment.

Board finds that it has jurisdiction over the parties and the subject matter of the appeal.

Findings of Fact

The subject property consists of two parcels that are part of a golf course commonly known as Klein Creek Golf Course. The golf course has approximately 135 acres of land situated on 19 parcel numbers (PINs), two of which are under appeal. PIN 05-06-209-018 has .91 acres and is improved with a one-story metal clad building with 6,050 square feet of building area and a smaller metal clad building. PIN 05-06-405-014 consists of 3.02 acres of land and is improved with a clubhouse and parking lot. The clubhouse is a one-story structure of stone construction with 7,149 square feet of building area. Features of the clubhouse include a full basement, one fireplace and central air conditioning. The property is located in Winfield, Milton Township, DuPage County.

The appellant appeared before the Property Tax Appeal Board through counsel, Anthony M. Farace, contending the subject improvements on the two PINs under appeal are necessary for the operation of the golf course and should be assessed as open space as provided by section 10-155 of the Property Tax Code (35 ILCS 200/10-155). Counsel argued the court in Onwentsia Club v. Illinois Property Tax Appeal Board, 2011 IL App (2d) 100388, 352 Ill. Dec. 329, 953 N.E.2d 1010, clarified the definition of open space by holding that "land, even if it contains an improvement, may be granted open space status if it conserves landscaped areas." Onwentsia, 2011 IL App (2d) 100388 at ¶16. The appellant asserted the court in Onwentsia opined that a golf course requires structures in order to function and without such structures the golf course would not exist. The appellant's counsel argued that the improvements on the two PINs under appeal are necessary for the overall operation of the golf course, which does conserve landscaped areas as required by the open space statute, and should receive the open space designation. The appellant requested the open space improvement assessments on the PINs be reduced to \$0 and the land be assessed at \$5,290 per acre, the open space assessment that is applied by the Supervisor of Assessments.

During the hearing the appellant's counsel explained that the parcel with the maintenance buildings, PIN 05-06-209-018, does not have any portion assessed as open space. During the hearing counsel asserted the maintenance buildings on this parcel house the equipment necessary to operate the golf course. He argued

that the land and all the buildings on this parcel are a necessary part of the golf course and are 100% used to conserve the golf course. Counsel further explained the second parcel under appeal, PIN 05-06-405-014, with the clubhouse and parking lot, is partially assessed as open space. Counsel asserted the clubhouse has a pro shop, restaurant, locker room facilities, offices and some maintenance facilities. He again argued that the improvements conserve the open space, which is the golf course. The appellant's counsel called no witnesses to testify with respect to the golf course; to testify about the various improvements and their uses on the respective PINs under appeal; and/or to explain how the various improvements relate to and facilitate the conservation of the golf course.

Under questioning counsel stated Klein Creek Golf Course is a public course. He also explained the restaurant is open to the public year round and the golf course supports banquets, which anyone can use. Counsel did not have the financial information with respect to the income generated by the restaurant; the income generated from the playing of golf; or the number of rounds of golf played per year. The appellant also did not provide a breakdown of the area of the clubhouse devoted to the restaurant, locker room, pro shop, offices and maintenance facilities.

The board of review submitted its "Board of Review Notes on Appeal" disclosing PIN 05-06-209-018 as having a land assessment of \$95,814 with no improvement assessment. The board of review also disclosed PIN 05-06-209-014 had a total assessment of \$828,687 with a land assessment of \$284,970 and an improvement assessment of \$543,717.

The board of review called as its witness Craig V. Dovel, the DuPage County Chief County Assessment Officer.² Dovel prepared a memo dated June 5, 2013, which was attached to the "Board of Review Notes on Appeal," explaining that section 10-160 of the Property Tax Code (35 ILCS 200/10-160) requires that in counties with less than 3,000,000 inhabitants, the person liable for taxes on land used for open space purposes must file a verified application with the chief county assessment officer by June 30th of each year the open space valuation is desired. He also noted that if the application is not filed, the taxpayer waives the

² Section 1-15 of the Property Tax Code (35 ILCS 200/1-15) defines Chief County Assessment Officer stating:

Chief county assessment officer. The supervisor of assessments or the county assessor in each county.

right to claim the additional open space value for that year. During the hearing Dovel testified there is a long-standing policy that for existing properties where the use has been established as open space and there is a history of prior applications in place, he has not penalized an individual for failing to file an open space application during the tax cycle. He testified that he has not ever received an open space application for PIN 05-06-209-018 and did not receive an application for this parcel as of June 30, 2011. Dovel testified, however, that his office previously received an open space application for PIN 05-06-405-014 but did not receive such an application for the 2011 tax year. Even though he did not receive an open space application for PIN 05-06-405-014 for 2011 he decided to give a small portion of the site an open space preferential assessment as it had previously been established. He testified that the open space applications go to him personally.

In the memo Dovel set forth the fair cash value assessments for the parcels as assigned by the Milton Township Assessor's Office as follows:

Parcel No.	Land	Improvement	Total
05-06-209-018	\$95,814	\$0	\$95,814
05-06-405-014	\$317,952	\$543,717	\$861,669

Dovel further explained that for PIN 05-06-405-014 he determined that .33 acres was used as a practice green and believed it qualified for the preferential open space assessment given that the previous taxpayer had a longstanding history of filing timely open space applications for this parcel. Calculating the open space assessment for this parcel reduced the land assessment to \$284,970. During the hearing Dovel testified this area had previously received the preferential open space assessment in 2010.

Under questioning Dovel agreed that PIN 05-06-209-018 only had a land assessment and there was no improvement assessment even though this parcel has buildings on the site. The witness explained that in many cases when there is a large property divided into many parcels, it is common practice to place the improvement assessments on one or two of the parcels and not allocate them throughout the individual parcels that comprise the entire property. He noted that PIN 05-06-405-014 had an improvement assessment of \$543,717 and he operated under the assumption that was for the improvements specifically located on

that parcel. He stated, however, it is possible that there may be other ancillary buildings included in that number.

Under cross-examination Dovel testified his records don't indicate that his office has ever received an open space application for PIN 05-06-209-018.

The next witness called by the board of review was Annette Rigali, Commercial Deputy Assessor for Milton Township. Rigali began working with the Milton Township Assessor's Office in January 2014. Rigali identified photographs of the buildings located on the subject PINs that were taken on June 16, 2014. She also provided copies of the property record cards for the respective PINs. (Marked as exhibits BOR #2 and BOR #3.) Although each property record card has some descriptive information, neither card had any assessment information. With respect to the property record card for PIN 05-06-209-018, she testified there is no value for the buildings on this card. She explained that according to the township records, the buildings on this parcel are included in the assessment for PIN 05-06-405-014. She testified the value for the buildings was not broken out. With respect to PIN 05-06-405-014, she agreed the improvement assessment was \$543,717 but indicated that by looking at the property record card you can't determine the calculations used to arrive at the number. There was no breakdown for the value attributed to the parking lot or the building on this parcel.

Based on this record, the board of review requested confirmation of the assessments.

Conclusion of Law

The appellant's argument is based on a contention of law that the subject property should receive the preferential open space assessment as provided by section 10-155 of the Property Tax Code (35 ILCS 200/10-155). Where a contention of law is made the standard of proof is the preponderance of the evidence. (See 5 ILCS 100/10-15). The Board finds the appellant did not meet this burden of proof and reductions in the subject's assessments are not warranted.

The issue in this appeal deals with application of the section 10-155 of the Code, the open space statute, to buildings located on the subject golf course. Section 10-155 of the Code provides in part:

§10-155. Open space land; valuation. In all counties, in addition to valuation as otherwise permitted by law, land which is used for open space purposes and has been so used for the 3 years immediately preceding the year in which the assessment is made, upon application under Section 10-160, shall be valued on the basis of its fair cash value, estimated at the price it would bring at a fair, voluntary sale for use by the buyer for open space purposes.

Land is considered used for open space purposes if it is more than 10 acres in area and: . . .

(d) conserves landscaped areas, such as public or private golf courses. . .

Land is not considered used for open space purposes if it is used primarily for residential purposes.

If the land is improved with a water-retention dam that is operated primarily for commercial purposes, the water-retention dam is not considered to be used for open space purposes despite the fact that any resulting man-made lake may be considered to be used for open space purposes under this Section. (35 ILCS 200/10-155).

Furthermore, section 10-160 of the Code provides:

§10-160. Open space; application process. . . . For taxable years prior to 2011, in counties with less than 3,000,000 inhabitants, the person liable for taxes on land used for open space purposes must file a verified application requesting the additional open space valuation with the chief county assessment officer by January 31 of each year for which that valuation is desired. **For taxable year 2011 and thereafter, in counties with less than 3,000,000 inhabitants, the person liable for taxes on land used for open space purposes must file a verified application requesting the additional open space valuation with the chief county assessment officer by June 30 of each year for which that valuation is desired. If the application is not filed by January 31 or June 30, as applicable, the taxpayer waives the right to claim that additional valuation for that year.** (Emphasis added). The application shall be in

the form prescribed by the Department and contain information as may reasonably be required to determine whether the applicant meets the requirements of Section 10-155. If the application shows the applicant is entitled to the valuation, the chief county assessment officer shall approve it; otherwise, the application shall be rejected.

When such an application has been filed with and approved by the chief county assessment officer, he or she shall determine the valuation of the land as otherwise permitted by law and as required under Section 10-155, and shall list those valuations separately. The county clerk, in preparing assessment books, lists and blanks under Section 9-100, shall include therein columns for indicating the approval of an application and for setting out the two separate valuations. (35 ILCS 200/10-160).

The Board finds the testimony provided by Dovel was not contradicted by any testimony or evidence from the appellant that the appellant or the person liable for the taxes did not file a verified application requesting the additional open space valuation with the chief county assessment officer by June 30, 2011, for either PIN under appeal, as required by section 10-160 of the Property Tax Code. Dovel further testified that no open space application had ever been received by his office for PIN 05-06-209-018. The Board finds due to the fact that no open space application had been filed by the owner or person liable for the taxes for PIN 05-06-209-018, the appellant has waived its right to claim the preferential open space assessment for that PIN.

The testimony provided by Dovel was slightly different as it related to the open space assessment for PIN 05-06-405-014. He explained that although no open space application had been made by June 30, 2011 for this PIN, there had been prior open space applications for this parcel and this parcel had previously received the preferential open space assessment on the portion devoted to the practice green. The chief county assessment officer further testified that there is a long-standing policy that for existing properties where the use has been established as open space and a history of prior applications is in place, he has not penalized an individual for failing to file an open space application during the tax cycle. Considering this policy, the Board finds it was appropriate based upon the principle of uniformity for Dovel to compute the open space

preferential assessment for PIN 05-06-405-014 as it related to the practice green. (See Moniot v. Property Tax Appeal Board, 11 Ill.App.3d 309, 296 N.E. 2d 354 (3rd Dist. 1973)).

The next issue involves whether or not the appellant demonstrated that the clubhouse and parking lot on PIN 05-06-405-014 qualify for the open space assessment. It is undisputed that the improvements are part of a public golf course, which is one of the enumerated uses that qualify for the open space designation as set forth in section 10-155(d) of the open space statute. (35 ILCS 200/10-155(d)).

In Onwentsia Club v. Illinois Property Tax Appeal Board, 2011 IL App (2d) 100388, 953 N.E.2d 1010, 352 Ill.Dec. 329, (hereinafter "Onwentsia I") the court broadly construed the word "conserve" in section 10-155(d) of the Property Tax Code to mean "to keep in a safe or sound state . . ." or "to preserve." 2011 IL App (2d) 100388 at ¶10, 953 N.E.2d at 1013. The court in construing section 10-155(d) of the Property Tax Code stated:

[T]he plain language of the statute indicates that the legislature intended to grant open-space status not only to land that actually constitutes a landscaped area, but also to land that facilitates the existence of (*i.e.*, conserves) a landscaped area. Id.

The court concluded that the fact that a particular piece of land has some improvement upon it - including in some cases a building - does not preclude the land from being deemed open space. Onwentsia I, 2011 IL App (2d) 100388 at ¶11, 953 N.E.2d at 1014. In broadly construing the statute, the court determined that an improvement does not defeat the open space status unless the improvement is a commercial water-retention dam or a residential use. Onwentsia I, 2011 IL App (2d) 100388 at ¶14, 953 N.E.2d at 1014-1015. The court stated that, "the requirement that land *conserve* a landscaped area is broader and more inclusive than actually *being* a landscaped area." Onwentsia I, 2011 IL App (2d) 100388 at ¶14, 953 N.E.2d at 1015.

The court in Onwentsia I ultimately held "that land, even if it contains an improvement, may be granted open-space status if it conserves landscaped areas." 2011 IL App (2d) 100388 at ¶16, 953 N.E.2d at 1015. The court explained that "[a] golf course typically requires certain appurtenances in order to function, such as parking areas, a building in which to conduct the course business (*i.e.*, a clubhouse), and perhaps a building to support the physical maintenance of the course." Id. The court

reasoned that "[s]ince they facilitate the existence of the golf course, and the course conserves landscaped areas, such improvements also can be said to conserve landscaped areas." Id.

The court explained that if an improvement contributes to the nature of the land as a landscaped area, it fits within the statutory definition of open space. The court stated that to the extent improved land facilitates a golf course being a golf course, it conserves a landscaped area. In vacating the decision of the Property Tax Appeal Board and remanding with directions, the court in Onwentsia I determined that the Property Tax Appeal Board had applied an incorrect standard and should have considered whether the land, improved or not (so long as not improved with a residence or commercial water-retention dam), conserves a landscaped area (that is, facilitates the existence of such an area). 2011 IL App (2d) 100388 at ¶18, 953 N.E.2d at 1016.

In Lake County Board of Review v. Property Tax Appeal Board, 2013 IL App (2d) 120429, 989 N.E.2d 745, 371 Ill.Dec. 155, (hereinafter "Onwentsia II") the court again vacated the decision of the Property Tax Appeal Board and remanded the matter with directions. In Onwentsia II the court held the Property Tax Appeal Board's application of the relevant portion of section 10-155 of the Code was overbroad. In construing section 10-155(d) of the Code in Onwentsia II the court stated:

Nothing in the statute indicates that the legislature intended to create an enormous tax shelter whereby any parcel of property associated in some way with a golf course would escape taxation. Moreover, it is axiomatic that we are to construe tax exemptions "narrowly and strictly in favor of taxation" (citation omitted) and the burden to prove a tax exemption lies with the taxpayer (citation omitted). **Accordingly, we hold that "conserve" as it is used in section 10-155 of the Code (citation omitted) must be construed narrowly, and in turn, there must be some substantial nexus between the land for which the exemption is claimed and the landscaped area it is claimed to conserve. That is to say, the improvement in question must directly relate to and thus facilitate the existence of the golf course.** Onwentsia II, 2013 IL App 2d 120429 ¶10 (Emphasis added).

The court in Onwentsia II asserted that the determination of whether or not a property is to receive the preferential open space assessment should be viewed similarly as property claiming to be exempt. As stated by the Supreme Court of Illinois in Follett's Illinois Book and Supply Store, Inc. v. Isaacs, 27 Ill.2d 600, 190 N.E.2d 324 (1963):

Statutes exempting property from taxation must be strictly construed and cannot be extended by judicial interpretation. In determining whether or not property is included within the scope of a tax exemption all facts are to be construed and all debatable questions resolved in favor of taxation. Every presumption is against the intention of the State to exempt property from taxation. (Citation omitted). 27 Ill.2d at 606.

The burden in this appeal was on the appellant to prove the improvements in question directly related to and facilitated the existence of the golf course. In this appeal the appellant provided no witnesses to testify about the clubhouse and the parking lot on PIN 05-06-405-014 and their connection with the golf course. The Board finds the appellant failed to demonstrate with any probative evidence and testimony that there was some substantial nexus between the land for which the exemption was claimed and the landscaped area it was claimed to conserve. Based on this record the Board finds the clubhouse and parking lot on PIN 05-06-405-014 do not qualify for the preferential open space assessment.³

The Board finds the appellant submitted no other evidence and made no other argument challenging the assessment of the subject property. The Property Tax Appeal Board also finds problematic the fact that the property record cards for each PIN in this record do not accurately reflect the assessments attributed to the buildings present on the respective PINs under appeal. Instead, it appears the assessment for the improvements located on PIN 05-06-209-018 are included in the improvement assessment for PIN 05-06-405-014. On this record, the Property Tax Appeal Board is further unable to discern the improvement assessments that are to be associated with the buildings actually located on

³ Similarly, with respect to the buildings located on PIN 05-06-209-018 notwithstanding the fact no open space application was filed with the chief county assessment officer, the appellant did not demonstrate with any probative evidence and testimony that there was some substantial nexus between the land for which the exemption was claimed and the landscaped area it was claimed to conserve.

the respective PINs. This omission in the assessment mechanics, however, is not relevant to a final determination given the record evidence presented by the appellant.

In conclusion, the Board finds reductions in the assessments of the subject parcels is not justified.

This is a final administrative decision of the Property Tax Appeal Board which is subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.



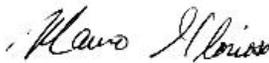
Chairman



Member



Member



Member



Member

DISSENTING: _____

C E R T I F I C A T I O N

As Clerk of the Illinois Property Tax Appeal Board and the keeper of the Records thereof, I do hereby certify that the foregoing is a true, full and complete Final Administrative Decision of the Illinois Property Tax Appeal Board issued this date in the above entitled appeal, now of record in this said office.

Date: March 20, 2015



Clerk of the Property Tax Appeal Board

IMPORTANT NOTICE

Section 16-185 of the Property Tax Code provides in part:

"If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing complaints with the Board of Review or after adjournment of the session of the Board of Review at which assessments for the subsequent year are being considered, the taxpayer may, within 30 days after the date of written notice of the Property Tax Appeal Board's decision, appeal the assessment for the subsequent year directly to the Property Tax Appeal Board."

In order to comply with the above provision, YOU MUST FILE A PETITION AND EVIDENCE WITH THE PROPERTY TAX APPEAL BOARD WITHIN 30 DAYS OF THE DATE OF THE ENCLOSED DECISION IN ORDER TO APPEAL THE ASSESSMENT OF THE PROPERTY FOR THE SUBSEQUENT YEAR.

Based upon the issuance of a lowered assessment by the Property Tax Appeal Board, the refund of paid property taxes is the responsibility of your County Treasurer. Please contact that office with any questions you may have regarding the refund of paid property taxes.