



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

APPELLANT: Cress Creek Golf Club, Inc.
DOCKET NO.: 11-03328.001-C-3
PARCEL NO.: 07-11-403-129

The parties of record before the Property Tax Appeal Board are Cress Creek Golf Club, Inc., the appellant, by attorneys Franco A. Coladipietro and Anthony 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 assessed valuation of the property is:

FAIR CASH VALUE ASSESSMENT

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
11-03328.001-C-3	07-11-403-129	3,501,780	1,847,960	\$5,349,740

OPEN SPACE ASSESSMENT

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
11-03328.001-C-3	07-11-403-129	749,140	1,847,960	\$2,597,100

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the DuPage County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2011 tax year.¹ The Property Tax Appeal Board

¹ Pursuant to Section 1910.78 of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.78) a consolidated hearing was held with Docket No. 12-03679.001 & .002-C-3. The 2012 appeal also included an appeal on parcel number (PIN) 07-12-104-041, which was improved with tennis courts. At the hearing the appellant withdrew the appeal on that parcel conceding that no part of that PIN should be afforded open space. Separate decisions will be issued for each appeal.

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

Findings of Fact

The subject property consists of 132.46 acres improved with a clubhouse with approximately 15,937 square feet of above grade area and 16,047 square feet of lower level area, a pool house with 2,392 square feet of building area, a 3,396 square foot in-ground swimming pool, a 2,849 square foot in-ground lap pool, four maintenance buildings that range in size from 572 to 6,000 square feet of building area and an 18 hole golf course. The clubhouse, pool house, swimming pools and associated asphalt parking area are located on approximately 4.6 acres. The maintenance buildings are located on approximately .5 acres and the golf course is composed of approximately 127.36 acres.² The property is located in Naperville, Naperville Township, DuPage County.

The appellant appeared before the Property Tax Appeal Board through counsel, Anthony Farace, arguing the subject property should be assessed as open space. In a brief the appellant explained that the DuPage County Supervisor of Assessments had placed a dual assessment on 130.17 acres of the property due to its classification as "open space" with the remaining 2.29 acres of the property being assessed as commercial land. The appellant argued that the entire 132.46 acres be assessed as open space as provided by section 10-155 of the Property Tax Code (35 ILCS 200/10-155). Citing Onwentsia Club v. Illinois Property Tax Appeal Board, 2011 IL App (2d) 100388, 953 N.E.2d 1010, 1015, 352 Ill.Dec. 329, the appellant argued the court clarified the definition of open space and provided that "... the land, even if it contains an improvement, may be granted open space status if it conserves landscaped areas." The appellant asserted that the court opined that a golf course requires structures in order to function, and without such structures the course would not exist. The appellant contends that the structures located on the subject property are consistent with Onwentsia and are necessary for the overall operation of the golf course, which does conserve landscaped areas as required by the open space statute. The appellant asserted the subject has a land assessment of \$749,140 and an improvement assessment of \$1,847,960. The appellant also stated that the supervisor of assessments was assessing open space land

² The data with respect to the buildings and acreage was submitted to the Property Tax Appeal Board by the DuPage County Board of Review by letter dated March 31, 2015 and is found at pages AE17A and AE17B.

at \$5,290 per acre. Citing Consumers IL Water Co. v. Property Tax Appeal Board, 363 Ill.App.3d 646, 844 N.E.2d 71, 75, 300 Ill.Dec. 399 (4th Dist. 2006), for the proposition that there is a single assessed value for properties qualifying for open space and the improvements are not to be separately assessed, the appellant requested the 132.46 acres be assessed at \$5,290 per acre or \$700,713.

The appellant called as its witness Wally Hynes, general manager and head golf professional of Cress Creek Golf Club. Hynes has been employed by the appellant for 22 years. The witness described the clubhouse as a two-level facility. The lower level encompasses locker rooms, the golf shop, golf cart facility and card rooms. The first floor or upper story houses the office spaces, a pub, dining rooms and restaurant area. The first floor also has a trophy room called the Heritage Hallway. The clubhouse is constructed into a hill with the lower level or basement, which is fully finished, opened to the back. Hynes agreed that the lower level of the clubhouse has 16,047 square feet of building area and the first floor or upper level has approximately 15,937 square feet. The witness further explained the lower level has a bag storage area for all golf clubs, a caddie room, the golf shop for merchandise and restrooms. During the winter months the pro shop remains open and the cart barn or cart facility is turned into a teaching area with hitting stations and video lessons. Hynes testified the maintenance of the golf course is handled by the maintenance facilities.

Under cross-examination Hynes explained that the golf club is a private facility and there is no public restaurant. Those with a golf membership, dining membership or social swim and tennis membership are allowed to eat at the restaurant.

Hynes explained the present clubhouse opened in June 2004, it had replaced a previous clubhouse on the property. He was of the opinion the basement level was primarily used in connection with the golf course. This area has both men's and women's locker rooms. The basement also has card rooms, which are part of the locker rooms, and are lounge areas used by players to play cards or eat. Also located in the basement is a "cart barn" used to store golf carts. The baggage storage area is used to store the golf bags for the members. The caddie room is where the caddies check in with the caddie master and their supplies are stored. In the winter months the caddie room is used for teaching. The pro-shop is used to sell clothing and golf equipment. There are also restrooms, an engineer's room,

which maintains the building, and a mechanical room in the basement.

The upper floor has various offices used for business operations, a pub or bar area, dining room, a restaurant and trophy hallway. Hynes testified that the banquet facility is part of the dining room facility. The kitchen, banquet facility and pub are open year round.

The witness testified that the golf course is open for play 12 months a year, weather permitting. He explained that they put the pins in temporary greens that allows access so if the members can play, they can. He explained Cress Creek Golf Club is a private club and you have to be a member to play. Hynes testified the subject property had a gross income of about \$4.5 million and about \$2.5 million was related to golf and about \$2.0 million was associated with the kitchen, grill and banquet facility.

Other buildings on the site included a bath house, which contains the locker rooms for the swimming pool. This building also has a snack bar area and houses the pump filters for the pool.

Hynes testified there were also four maintenance buildings on the site. Each of these buildings is of wood frame construction with a concrete floor. Hynes testified the subject property has a maintenance building with approximately 7,000 square feet of building area, which is used to repair and store maintenance equipment as well as store supplies. The equipment stored included various types of mowers used to maintain the course, sprayers used for fertilizers, equipment used to rake bunkers, equipment used for sharpening reels, a pick-up truck used throughout the course and a parts room which keeps supplies for the equipment. There is also a spray barn used to keep one of the sprayers used to apply fertilizer and herbicides on the golf course. Hynes also testified there was a back barn that houses additional equipment from aerifiers to additional carts or carry-alls used on the golf course for maintenance. The witness also testified there is a pump house located on the site which houses all of the irrigation system to pump the water to the entire golf course to maintain the course. The subject property also has a restroom near 6th green and 7th tee-box available for the golfers. The appellant also testified there is a tennis hut used by the professional tennis staff and stores the timer for the irrigation system for the clay tennis courts.

Hynes further testified there is asphalt parking for 225 cars used by someone using the facilities. He testified that there is no special designation for those there to golf, play tennis, swim or dine.

The appellant called no other witnesses on its behalf. Based on this record the appellant requested the subject's assessment be reduced to \$700,713.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$2,597,100 with a land assessment of \$749,140 and an improvement assessment of \$1,847,960.

The board of review called as its witness Craig V. Dovel, the DuPage County Supervisor of Assessments.³ Dovel prepared a memo dated August 21, 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 right to claim the additional open space value for that year. The memorandum stated that his office did not have an application on file for the subject property. Dovel testified at the hearing that with respect to both the 2011 and 2012 tax years his office has no open space applications on file for the subject property. Nevertheless, Dovel calculated an open space assessment for the subject property. In the memorandum Dovel explained the 2011 fair-cash value assessment established by the township assessor was:

Land:	\$3,276,620
Building:	\$1,729,240
Total:	\$5,005,760 ⁴

Dovel described the subject property as having 132.46 acres improved with a banquet facility, restaurant, clubhouse, swimming pool, utility buildings and a golf course. He

³ 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.

⁴ This was in fact the fair cash value assessment for 2012.

testified that the main distinction used was that in any areas improved with a "non-impervious" improvement are typically retaining the fair cash assessment originally assigned by the township assessor's office. Utilizing an aerial photograph Doval measured 2.29 acres of land that was not covered by non-impervious improvements with the balance or 130.17 acres being used as a golf course. In the memorandum Doval asserted that he believed that manicured green space area and ponds qualified for the preferential open space assessment and given the fact that the taxpayer had a long standing history of filing timely open space applications for the parcel, he granted the preferential open space assessment on 130.17 acres and retained the township assessor's original fair cash assessment on the remaining portion of the subject property. Doval testified that the open space value is a uniform rate that is applied across the county. For the 2011 tax year the open space rate was \$5,290 per acre and for the 2012 tax year the open space rate was \$4,900 per acre. He further testified that the dual valuation that was assigned to the subject parcel for 2011 and 2012 was a hybrid of both the preferential and the non-preferential assessed values. The open space assessment for 2011 was set forth as:

	2.29 Acres Non- Preferential	130.17 Acres Preferential	Combined
Land:	60,540	688,600	
749,140			
Building:	1,847,960	0	1,847,960
Total:	1,908,500	688,600	
	2,597,100		

Dovel was of the opinion that the appellant previously waived its right to expand the preferential assessment with the lack of filing a timely application for open space.

Under cross-examination Dovel testified that the township assessor had assigned an assessed value of \$1,847,960 to the improvements and that building assessment was retained in the hybrid assessment. The witness testified that he is the person that calculates the open space assessment and is not concerned with the improvement assessments. He did not know what portion of the improvement assessment was attributed to the various improvements on the subject property and was not in a position to allocate the improvement value against the various improvements.

Dovel testified that there were no open space applications applied for the subject property in 2011 and 2012. He indicated

all applications go to him and he reviews and approves them. Although he received no open space applications for the subject property for the years in question, Doval believed it was in everybody's best interest to give the open space preferential assessment because the property was obviously being used as a golf course and if it was further litigated and found eligible to receive the preferential value, that the potential loss and assessed valuation from the time of tax extension to after the tax extension would create a hardship for the various taxing districts involved. Doval testified this was his typical reaction throughout the county, if he does not receive an open space application and he feels comfortable that the property is in an open space use. He also agreed that there was a long-standing history of filing for open space on this parcel. The witness further explained that "non-impervious" improvements are anything that prevents ground to absorb water.

The next witness called on behalf of the board of review was Scott Koca, Naperville Township Deputy Assessor. The board of review presented Board of Review Exhibit A, which was prepared by Koca, that contained a list of the various buildings and the identification of the various parcels they are located on.⁵ The exhibit also had the fair cash value assessments and the open space assessments for the 2011 and 2012 tax years. Koca has been in the assessment field for six years and has been a deputy assessor with Naperville Township for the past year. Koca also has the Certified Illinois Assessing Officer (CIAO) designation.

For the 2011 tax year the subject property had an improvement assessment of \$1,847,960 and for the 2012 tax year the subject property had an improvement assessment of \$1,729,140. Koca testified that he did not have a breakdown of the assessments for the individual buildings on the site. The building assessments were the cumulative assessment of the building improvements on the site.

Under cross-examination Koca agreed the clubhouse contained 15,937 square feet of building area on the upper level and 16,047 square feet on the lower level. He noted that the clubhouse measurement on Exhibited A was depicted in red because it is the only official measurement on record on the property record card. Other improvements identified as being located on the subject parcel included a pool house, maintenance building,

⁵ The exhibit included information about PIN 07-12-104-041, which contained the tennis courts. The appeal of this PIN for 2012 tax year was withdrawn by the appellant.

two-car garage, bath house, service garage, in-ground pool and in-ground lap pool.

In rebuttal Hynes testified that the two-car garage identified on Board of Review Exhibit A would be the fertilizer barn, the bath house would be connected with the swimming pool and the service garage would be what he identified as the back barn.

At the hearing the DuPage County Board of Review was granted 30-days to submit to the Property Tax Appeal Board information that would delineate the buildings on the subject parcel and the values associated with the buildings. Following the hearing the DuPage County Board of Review submitted a response from Deputy Township Assessor Scott Koca, which included various attachments. In summary Koca was of the opinion that the only building valued at the subject property for the 2011 and 2012 tax years was the clubhouse. The submission also included a revised "Land & Improvement Data Sheet" with changes to reflect building details obtained after a field check of the property (AE17A & AE17B), revised building sketches after the field check (AE20 - AE22) and updated photographs of the improvements (AE23 - AE27).

Conclusion of Law

The appellant's argument is based on a contention of law that the subject property, inclusive of the buildings, should receive the preferential open space assessment as provided by section 10-155 of the Property Tax Code (hereinafter "the 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 a reduction to the subject's assessments is not warranted.

The issue in this appeal deals with application of sections 10-155 and 10-160 of the Code, the open space statute, to buildings located on the subject golf course. Sections 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**, (emphasis added) 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 for the subject property for the 2011 and 2012 tax years, as required by sections 10-155 and 10-160 of the Code. The Board finds due to the fact that no verified open space application has been filed by the owner or person liable for the taxes, the appellant has waived its right to claim the preferential open space assessment for that the subject property for the 2011 and 2012 tax years.

The evidence and testimony provided by Dovel, however, revealed that although no open space applications had been filed for the 2011 and 2012 tax years, he nevertheless computed an open space assessment for 130.17 acres of green areas commonly associated with the golf course itself not covered with a "non-impervious" improvement. He testified 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 golf course. Dovel testified this was his typical reaction throughout the county, if he does not receive an open space application and he feels comfortable that the property is in an open space use. The Board finds it is appropriate, based on Dovel's practice to compute an open space assessment in similar situations throughout the county where a verified open space application has not been filed, to confirm the open space assessment of the green space on the golf course. (See Moniot v. Property Tax Appeal Board, 11 Ill.App.3d 309, 296 N.E. 2d 354 (3rd Dist. 1973)). The Board finds, however, that due to the fact the appellant did not file verified open space applications for the 2011 and 2012 tax years, it will not extend consideration of the preferential open space assessment to the

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clubhouse, maintenance buildings, parking lot and other improvements located on the subject property.

Based on this record the Property Tax Appeal Board denies the appellant's request to classify and assess the additional 2.29 acres of the subject site as open space.

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

K. L. Fan

Klaus Albrecht

Member

Member

JR

Jerry White

Member

Acting Member

Robert Steffen

Acting 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: November 20, 2015

A. Proctor

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.