FINAL ADMINISTRATIVE DECISION
ILLINOIS PROPERTY TAX APPEAL BOARD

APPELLANT: Clyde A. & Marlene M. Raible
DOCKET NO.: 12-01559.001-F-1 through 12-01559.004-F-1
PARCEL NO.: See Below

The parties of record before the Property Tax Appeal Board are Clyde A. & Marlene M. Raible, the appellants, and the Knox County Board of Review.

Based on the facts and exhibits presented in this matter, the Property Tax Appeal Board hereby finds ***A Reduction*** in the assessment of the property as established by the **Knox** County Board of Review is warranted.[1] The correct assessed valuation of the property[2] is:

DOCKET NUMBER	PARCEL NUMBER	FARM LAND	LAND/LOT	RESIDENCE	OUT BLDGS	TOTAL
12-01559.001-F-1	10-24-400-003	2,660	3,190	0	0	$5,850
12-01559.002-F-1	10-25-100-005	0	13,810	**14,510**	0	$28,320
12-01559.003-F-1	10-25-300-004	2,950	**9,150**	**0**	**0**	$12,100
12-01559.004-F-1	10-25-200-001	3,330	27,520	**0**	**0**	$30,850

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellants timely filed the appeal from decisions of the Knox County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessments for the 2012 tax year. The Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal.

Preliminary Matter & Issues Raised

Pursuant to Property Tax Appeal Board rule §1910.78 (86 Ill.Admin.Code §1910.78) due to the common issues of law and fact, Docket Nos. 12-01559.001-F-1 through 12-01559.004-F-1, Docket Nos. 13-03187.001-F-1 through 13-03187.004-F-1 and Docket Nos. 14-02641.001-F-1 through 14-02641.002-F-1, were consolidated for purposes of a single oral hearing at which both parties appeared before the Property Tax Appeal Board. The Board will issue separate decisions for each docket number as to tax years 2012, 2013 and 2014.

[1] Changes in assessments are delineated in **boldface** type.
[2] This decision reflects the open space assessments of the parcels based on the record evidence.

1) Classification/Assessment of Golf Course Building Improvements & Residence

As part of the appeal, the appellants requested that the assessments of buildings related to the maintenance of the golf course be reduced to zero in light of recent case law and also requested a reduction in the assessment of the single-family residence occupied by the appellants. At the hearing it was reported that as of tax year 2014, the Knox County Board of Review acknowledged the finality of the Onwentsia appellate court determination[3] and removed the improvement assessments for the building improvements on the subject parcels that are related to solely to the maintenance of the golf course. In addition, as to the assessment of the dwelling occupied by the appellants, the board of review representative reported a reduced assessment had been applied to the dwelling for tax year 2014 of $14,510. At the hearing, the board of review requested application of the same assessment reduction to the dwelling for tax years 2012 and 2013, respectively.

In summary on the building assessment issues, at the commencement of hearing, Chris Gray, Clerk of the Knox County Board of Review and the sole authorized representative at the hearing on behalf of the board of review, agreed that the improvement assessments for buildings that exist to facility the existence of the golf course for tax years 2012 and 2013 should be reduced to zero. She further reported that the assessment of the residential dwelling occupied by the appellants should be reduced to $14,510 for tax years 2012 and 2013. As such, the decisions issued by the Property Tax Appeal Board for these appeals for tax years 2012 and 2013 will each reflect reductions in the golf course related building assessments to zero as requested by the appellants in this appeal and shall also reflect the reduction in the residential dwelling assessment as agreed to by the board of review and to which the appellants' representative Clyde Raible orally stipulated to at the hearing.

2) Classification/Assessment of Portions of PINs

At the commencement of hearing, the parties came to a verbal agreement as to the correct land and farmland assessments of two parcel identification numbers or PINs (-004 & -005) that were appealed for tax years 2012 and 2013. The remaining parcels -001 (173.5-acres) and -003 (80-acres) which were appealed in tax years 2012, 2013 and 2014 were still in dispute between the parties as to the proper classifications of various portions of the parcels and will be the sole focus of the remainder of this decision.

Findings of Fact

In summary, the subject property consists of four parcels identified by four separate PINs comprising a total of approximately 391.49-acres. Portions of the subject parcels are operated as Laurel Greens, a rural golf course. Three of the PINs are also improved with various building improvements including a residential dwelling utilized by the appellants as their home, a machine shed, a pole building/clubhouse and two "unlivable" dwellings that are used for storage of items related to the golf course. The subject property is located in Knoxville, Knox Township, Knox County.

[3] See Lake County Board of Review v. Property Tax Appeal Board, 2013 IL App (2d) 120429 (May 6, 2013).

The appellants built the first nine holes in 1969/1970 and opened the course to the public in 1971. On November 26, 1984 the appellants applied for an open space valuation in accordance with the Property Tax Code.[4] An additional nine-holes were opened by the appellants in 1990 and a third nine-holes were built in 1996 with a fourth set of nine-holes added in 2000. The two parcels in dispute, PINs -001 and -003, each are assessed in part under the preferential farmland classification and in part as open space due to use of portions of the parcels as a golf course.

The appellant Clyde A. Raible appeared before the Property Tax Appeal Board on behalf of the appellants and based this appeal on a claim of improper classification. There were two issues raised by the appellants' appeal. The issue of the assessment of the buildings related to the maintenance of the golf course and assessment of the appellants' home have been resolved. The proper assessment of land as delineated farmland and open space on parcels -001 and -003 is in dispute between the parties. As to the disputed land assessment, the appellants argued the parcels are entitled to additional acreage with a farmland classification and assessment and reductions in acreage classified and assessed as open space. As part of the appeal and in support of the appellants' classification argument, the appellants included a detailed aerial photograph produced by the U.S.D.A Farm Service Agency of the disputed parcels upon which the appellants had sketched out in red pen the various classifications or desired classifications of "golf course" (G.C.), "water" and "F" farmland areas.[5]

The appellants' evidentiary submission also included copies of the Knox County Farmland Valuation Cards for parcel -001 for tax years 2011 and 2012. As set forth in the brief and on the card, the 2011 assessment of parcel -001 provided for:

11.58-acres of cropland with an assessment of $3,020
88.23-acres of non-ag land open space with a -0- assessment
66.67-acres of permanent pasture with an assessment of $1,030
7.02-acres of water with a -0- assessment

In contrast, for tax year 2012, parcel -001 had two classifications applied as follows: 11.58-acres of cropland and 161.91-acres of non ag land assessed as open space. For this appeal, the appellants seek to return to the tax year 2011 classifications of parcel -001 for assessment purposes and, as to the water area of 7.02-acres, the appellants make an alternative argument that as an "improvement" to the property that supports the golf course, the water or man-made pond should have a zero assessment. The basis of the argument concerning the assessment of the pond is that the pond was constructed and is an essential improvement to maintain the golf course. The appellant testified that the water or pond area was dug out and created in 1990. The pond is essential to maintain the subject golf course for watering the type of grass that makes up the golf course. As such, the appellants contend that the 7.02-acre water area of parcel -001 is entitled to a zero "improvement" assessment.

[4] As a consequence of the open space application and subsequent appeals, the subject golf course was the subject matter of an appellate court opinion in Knox County Board of Review v. Property Tax Appeal Board, 185 Ill.App.3d 530 (3rd Dist. 1989).

[5] At the hearing, the appellant presented a single color copy of this aerial photograph which had previously been presented in each of the appeals as a black and white photocopy.

For parcel -003, the appellants' evidentiary submission reported the assessing officials have 18.79-acres classified as non ag land assessed as open space. The appellants contend parcel -003 has three golf course areas as depicted on an aerial photograph as marked by the appellants which calculate as a total of only 10-acres that should be classified as non ag land and assessed as open space.[6] Descriptively, the appellants' aerial photograph with farm/open space boundaries has narrowed golf course areas and identified tree areas as farmland. The appellant testified that the slender white lines depicted in the aerial photographs in the record reflect the cart paths of the golf course. On the appellants' aerial photograph of parcel -003, the appellant drew a red line on the cart path encompassing an area with trees, both dense and less dense, as qualifying for a farmland assessment.[7] The appellant testified, "We don't have any rough on our golf course. Everything is mowed the same height." Raible testified that it is all mowed as one fairway.

In summary, the appellants contend that farmland areas should be expanded in acreage and open space land areas should correspondingly be decreased in area on the disputed parcels along with a zero "improvement" assessment for the pond area. The appellants contend that various 'rough' areas and/or tree filled areas of the golf course which have remained the same and "untouched" should be afforded a farmland assessment and classification. The appellant in testimony further articulated his theory that the disputed land areas in both parcels -001 and -003 were originally classified as farmland prior to the building of the golf course and these disputed areas have remained untouched as the golf course was built. Therefore, from the appellants' perspective these untouched land areas should be assessed as farmland. He also testified that the disputed land areas have not been cropped due to the nature of the ground, although it would be cropped if it could be.

The appellant also offered in testimony that his rationale for "not allowing" any additional land to be placed in open space is because we are going to be closing some nine's which will result in a cost to the appellant. (See 35 ILCS 200/10-155) As set forth in a brief, the appellants recognized that when land is no longer used for open space, the difference between the taxes paid in the three preceding years and what the taxes would have been when based on valuation as otherwise permitted by law together with 5% interest must be paid the following September 1. The appellants in the briefing asserted that it was a near certainty that at least one and possible two nine-hole areas will need to be closed due to declining play and maintenance costs.

At the hearing, the Administrative Law Judge specifically asked appellant Clyde Raible what farming activity he engages in on the land which he contends should be assessed as farmland? In response, the appellant contended that the ruling by the Property Tax Appeal Board in 1996 which found the assessing officials should separately assess the open space golf course area from the farmland. When asked for greater details of the farming activity that the appellant undertakes on the disputed areas for which a preferential farmland assessment is being requested, the appellant characterized the disputed land as "wasteland" or "other farm ground" but then acknowledged that the disputed land was not attached to nor directly associated with land that

[6] The aerial specifically denotes three golf course areas of 3.8-acres, 4.4-acres and 1.8-acres, respectively.
[7] The board of review's aerial photograph of parcel -003 (BOR Exhibit #1 to Notes on Appeal for Docket No. 12-01559.001-F-1) has assessed a dense portion of trees as farmland, but the appellants have expanded the area requested for a farmland assessment.

has farming activity. When further asked about a triangular area on parcel -001 for which the appellant was purportedly seeking a farmland assessment based on his marked up aerial photograph, the appellant testified this was wasteland.[8] The appellant was seeking to expand the area slightly to include additional ground that would be assessed as farmland.

During the hearing, the appellant did not specify any defined farming activity that was occurring on any of the disputed areas that are adjacent to the golf course fairways and for which the appellants seek a farmland classification. Based on the foregoing evidence and argument, the appellants requested additional areas as outlined in an aerial photograph of parcels -001 and -003 be classified as farmland and be removed from open space valuation since these areas "have remained untouched" since prior to the installation of the golf course.

The board of review submitted its "Board of Review Notes on Appeal" wherein the assessments of each of the four parcels were separately disclosed with separate responsive evidence attached. In response to each of the parcels on appeal, the board of review submitted a multi-page letter prepared by Chris Gray, Clerk of the Knox County Board of Review outlining the evidence and argument of the board of review as to each parcel. Relevant to the remaining issues which are pending, parcel -001 has a farmland assessment of $3,330 for 11.59-acres and a land assessment of $27,520 (open space valuation) for 161.91-acres. Parcel -003 has a farmland assessment of $2,660 for 61.21-acres and a land assessment of $3,190 (open space valuation) for 18.79-acres. Only the relevant data as to parcels -001 and -003 will be addressed in this decision.

On behalf of the board of review, Chris Gray testified that about 25 years ago for a four year period, she golfed. Gray testified that given her skills at golfing, her golf balls most often landed in the rough areas and tree areas of the golf course; she noted it is difficult to get the balls out of those areas. It was Gray's contention that most of the additional/expanded areas that the appellants seek to have classified as farmland are simply the rough areas that are part of the golf course. Gray summarily described the playing of a golf course as the player hitting their ball on the fairway and trying to reach the green where the hole is located and the player racks up additional shots or points for each stroke getting golf balls out of the rough areas.

In her testimony, Gray compared the board of review's aerial photograph of parcel -003 delineating the farmland and "non ag" areas as currently assessed with the appellants' marked aerial photograph seeking additional farmland area. Gray argued that the appellants' contention essentially seeks to eliminate all of the rough areas from the open space valuation leaving only the fairways as part of the open space valuation. It was Gray's opinion that few if any golfers would never hit their golf balls into the tree or rough areas; she also acknowledged appellant Raible's testimony that his course has no "rough" areas as it is all mowed the same height. Gray further opined, based on her golfing experiences, golf balls land on the edge of or into the tree lines and most players will play from where the ball landed. She opined that the wooded and tree area in and amongst the golf course is part of the rough of the golf course. Gray in testimony further distinguished the areas of the subject parcel where the appellants are actually raising crops and areas north of the subject parcels which are all being assessed as farmland.

[8] In the course of the questions by the Administrative Law Judge, the board of review's representative interjected that in accordance with the board of review's overlay map on parcel -001 (BOR Exhibit #1 to Notes on Appeal for Docket No. 12-01559.004-F-1), the triangular area actually has been assessed as other farmland.

The board of review reported, in pertinent part, that open space land assessment in the county for most golf courses is $250 per acre or a fair market value of open space of $750 per acre. However, the Knox County Board of Review determined that the subject, as a rural golf course, differs from other golf courses in the county which were "Country Clubs." The subject lacks the swimming pools, tennis courts and other such amenities of other assessed area golf courses,[9] therefore, the board of review determined the subject should be assessed at $170 per acre.

As part of the submission, the board of review recognized the appellants' classification argument as a request to assess all of the land, except for just the areas of the fairways and golf course holes, as farmland. The board of review's evidentiary submission included separate aerial photographs of parcels -001 and -003 where areas colored in blue-green and denoted "NA" refer to "non ag" or the open space areas and areas colored in evergreen and denoted "CR" have been assessed using the preferential farmland assessment. Gray testified that the farmland areas were assessed as such based upon the FSA maps which the appellants provided to the assessing officials.

For parcel -001, there is an 11.59-acre area being cropped which has been afforded a farmland assessment given its farm use. In the letter, Gray reported that for all years prior to 2012, since the subject golf course has existed, "there has been permanent pasture on this parcel of land [known as -001]. In 2012 when we went in and uniformed all the golf courses in Knox County, and also cleaned up the land use layer and assessments on all of them, we adjusted all the appellant's parcels."

As to parcel -003 and in reference to Exhibit #1, an aerial photo of parcel -003 with the land use layer, Gray's letter stated, "[W]e included the actual golf course as open space, plus a little land around the fairway and holes themselves. We felt that 'open space' should be more than just the golf course hole and fairway." Also, as part of the submission, the board of review questioned the net effect of changing the classification of certain portions of the parcel stating, ". . . if this area was changed to farmland, the assessment could go up, down or not hardly change at all." In the letter, Gray also wrote, "We feel the pond and the small areas of trees add to the enhancement of the open space."

To display the uniformity in classification treatment of the subject golf course with other golf courses in Knox County, the board of review submitted Exhibits 4 and 5 consisting of aerial maps of two other golf courses displaying the land use layer; areas of water, trees, fairway, holes and land under all improvements are all considered "N/A" or non ag on the land use and assessed at $250 per acre. In testimony, Gray noted that there are four other area golf courses. One is city-owned and thus tax exempt; one does not have any tree/wooded area around it; and two other golf courses are referenced in the evidence filed by the board of review. As to these courses, Gray stated that these properties do have trees surrounding them and have been treated similarly to the subject where both trees and water areas are all classified as open space for assessment purposes.

[9] One of the area golf courses is owned by the City of Galesburg, making it tax exempt.

The Administrative Law Judge requested an explanation as to the determination that the pond on parcel -001 qualifies as open space rather than other farmland associated with the farming acreage on parcel -001. Gray testified that all golf courses she is familiar with in her experience have water on them in the form of ponds; the two comparable golf courses for which aerials have been provided each have lakes associated with the respective courses. Moreover, she acknowledged the appellant's testimony that the pond was a definite need to help in watering the golf course to maintain it. In other instances, Gray noted that a pond may be an obstacle in the course of playing golf.

The Administrative Law Judge also requested an explanation from Gray as to the board of review's position on the issue raised by the appellants that the pond was an "improvement" to the golf course having been dug out and created for the golf course and is therefore entitled to a zero assessment in accordance with the Onwentsia cases. In response, Gray noted that the board of review does not agree with that position and further testified that the holes are an "improvement" to the golf course and the fairways are an "improvement" to the golf course. The appellant had to build the golf course so under that logic, the entire golf course would have a zero assessment she contended.

Based on the foregoing evidence and argument as to parcels -001 and -003, the board of review requested confirmation of the classification and assessment of the parcels based upon the equitable and uniform treatment of the golf courses in Knox County including the treatment of water on golf courses as open space.

In rebuttal and in response to one point made by the board of review concerning assessments going up, down or not changing with a classification change, the appellants argued that the change in actual assessment of the land with a classification change was not the point of the appeal. Rather, the appellants contend that the land should be properly classified and then the applicable assessments would be correct for the subject parcels; the policy and the law would then be followed correctly.

With additional rebuttal testimony, appellant Raible also stated that the disputed land areas in parcel -001 for which he seeks a farmland classification are not suitable for farming and is "not suitable for anything." The appellant argued that given the land and topography, the golf course had to be built in the manner in which it was built. The appellant had no choice in the use of the land for the golf course and that a valuation of those areas is excessive given that the areas are not useful or used. The appellant further reiterated his concern that upon closure of the golf course, the cost under the Property Tax Code will be high. The appellant argued that the change in the classification of the land by the assessing officials was inappropriate.

Conclusion of Law

The remaining basis of this appeal by the appellants is a contention of law concerning the classification for assessment purposes of certain portions of parcels -001 and -003. The appellants seek to reduce the land area classified and assessed as open space to area classified and assessed as farmland. In addition, the appellants seek to have a pond area on parcel -001 assessed at zero on the grounds that it is an improvement to the land under current case law

concerning improvements to open space land. Section 10-15 of the Illinois Administrative Procedure Act (5-ILCS 100/10-15) provides:

> Standard of proof. Unless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence.

The rules of the Property Tax Appeal Board are silent with respect to the burden of proof associated with an argument founded on a contention of law. See 86 Ill.Admin.Code §1910.63.

1. Farmland Classification Request

The issue is whether the subject parcels are used primarily for agricultural purposes as required by Section 1-60 of the Property Tax Code (35 ILCS 200/1-60). In Senachwine Club v. Putnam County Board of Review, 362 Ill. App. 3d 566 (3rd Dist. 2005), the court stated that a parcel of land may be classified as farmland provided that those portions of the property so classified are used solely for agricultural purposes, even if the farm is part of a parcel that has other uses. *Citing* Kankakee County Board of Review, 305 Ill. App. 3d 799 at 802 (3rd Dist. 1999). A parcel of property may properly be classified as partially farmland, provided those portions of property so classified are used solely for the growing and harvesting of crops. Santa Fe Land Improvement Co. v. Illinois Property Tax Appeal Board, 113 Ill. App. 3d 872, 875, 448 N.E.2d 3, 6 (3rd Dist. 1983).

Section 1-60 of the Property Tax Code (35 ILCS 200/1-60) defines farmland as:

> . . . any property used solely for the growing and harvesting of crops; for the feeding, breeding and management of livestock; for dairying or for any other agricultural or horticultural use or combination thereof; including, but not limited to, hay, grain, fruit, truck or vegetable crops, floriculture, mushroom growing, plant or tree nurseries, orchards, forestry, sod farming and greenhouses; the keeping, raising and feeding of livestock or poultry, including dairying, poultry, swine, sheep, beef cattle, ponies or horses, fur farming, bees, fish and wildlife farming.

The Board finds that in order to receive a preferential farmland assessment, the property at issue must meet this statutory definition of a "farm" as defined in the Property Tax Code. The Property Tax Appeal Board finds portions of a parcel may be classified as farmland for tax purposes, provided those portions of property so classified are used solely for the growing and harvesting of crops and/or the raising of livestock. The parties agree that there are portions of parcels -001 and -003 that qualify for the preferential farmland assessment due to the farming activities on those certain identified portions of the parcels. As to the additional acreage or areas for which the appellants seek to obtain a farmland assessment, the appellant at hearing was very clear that the disputed land has not been farmed, cannot be farmed and has not been "touched" since the golf course was first constructed in approximately 1971 or for about 41 years.

In this regard, the Property Tax Appeal Board takes judicial notice of Section 10-147 of the Property Tax Code providing:

> Former farm; open space. Beginning with the 1992 assessment year, the equalized assessed value of any tract of real property that has not been used as a farm for 20 or more consecutive years shall not be determined under Sections 10-110 through 10-140. If no other use is established, the tract shall be considered to be used for open space purposes and its valuation shall be determined under Sections 10-155 through 10-165. (35 ILCS 200/10-147)

The subject property that is in dispute according to the appellant has not been "touched" since the construction of the original golf course holes which was 1969/1970. Therefore, based on the appellants' testimony more than 20 years have passed and this disputed "untouched" land, pursuant to Section 10-147 of the Property Tax Code shall be not assessed as farmland; if no other use is established, the land is then properly assessed for open space purposes as set forth in the statute. On this record, the assessing officials assessed the disputed land for open space purposes on the grounds that it is part of the golf course which the Board finds to be appropriate factually on this record and is further supported by the terms of the Property Tax Code.

The Board also finds relevant Section 10-110 of the Property Tax Code which provides in part:

> Farmland. The equalized assessed value of a farm, as defined in Section 1-60 and **if used as a farm for the preceding two years**, except tracts subject to assessment under Section 10-45, shall be determined as described in Sections 10-115 through 10-140 . . . (35 ILCS 200/10-110) [Emphasis added.]

The appellant clearly and unequivocally testified that the land at issue has not been touched since prior to the construction of the golf course. In order for real property to receive a farmland classification it must be used as a farm during the assessment year at issue and the two preceding years. Oakridge Development Co. v. Property Tax Appeal Board, 405 Ill.App.3d 1011, 938 N.E.2d 533, 345 Ill.Dec. 94 (2nd Dist. 2010). As stated in Oakridge Development Co., the courts have repeatedly held that "present use" controls the classification of farmland under the Property Tax Code. Oakridge Development Co., 405 Ill.App.3d at 1020. Therefore, the disputed land in this appeal has not had any farming activity occurring on the land during the assessment year on appeal or in the two years prior within the meaning of Section 1-60 of the Property Tax Code. As such the Board finds this record devoid of any evidence that supports a farmland classification and assessment for parcels -001 and/or -003 as requested by the appellants.

Based on the evidence presented, the Property Tax Appeal Board finds no change in the classification of parcels -001 and -003 are warranted on this record from open space to farmland; the Property Tax Appeal Board finds the board of review's classification of the land is correct.

2. Assessment of Pond

As an alternative argument to a farmland assessment for the pond located on parcel -001, the appellants argued that the pond was built on the subject golf course in 1990 in order to maintain the golf course for the purposes of watering the grass. The appellant at hearing argued that the pond was an "improvement" to the golf course and should have a zero improvement assessment.

In response the board of review contended that areas of water on golf courses are uniformly treated as open space as has been done with the subject golf course.

Section 10-155 of the Property Tax 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:
>
> (a) is actually and exclusively used for maintaining or enhancing natural or scenic resources,
>
> (b) protects air or streams or water supplies,
>
> (c) promotes conservation of soil, wetlands, beaches, or marshes, including ground cover or planted perennial grasses, trees and shrubs and other natural perennial growth, and including any body of water, whether man-made or natural,
>
> (d) conserves landscaped areas, such as public or private golf courses,
>
> (e) enhances the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations, sanctuaries, or other open spaces, or
>
> (f) preserves historic sites.
>
> 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).[10]

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) 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 of the 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.

[10] P.A. 95-70 §5, effective January 1, 2008, added the final paragraph.

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. 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. 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." 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. The court ultimately stated the Property Tax Appeal Board 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 Board and remanded the matter with directions. In Onwentsia II the court held the Board's application of the relevant portion of Section 10-155 of the Code was overbroad. The court explained that:

> 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 could perceive no nexus between the swimming pool, tennis facilities, and riding arena and stables and the golf course such that they could be said to facilitate the golf course's

existence in any way. The court further stated that the halfway house and the caddy shack relate directly to and thus facilitate the existence of the golf course. Onwentsia II, 2013 IL App 2d 120429 ¶11.

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 appellants to prove the improvements in question, namely, the man-made pond located on parcel -001, directly related to and facilitated the existence of the golf course. There was no dispute to the appellant's testimony that the pond was necessary to the existence of the golf course for purposes of watering the grass. However, subsection (c) of Section 10-155 of the Property Tax Code specifically includes for open space purposes more than 10 acres in area and "any body of water, whether man-made or natural." (35 ILCS 200/10-155(c)) As such, the subject pond on parcel -001 qualifies for an open space assessment along with the remainder of the parcel.

Furthermore, the Board finds the most directly relevant case to the appellants' argument concerning the pond is Consumers IL Water Company v. Vermilion County Board of Review, 363 Ill.App.3d 646, 844 N.E.2d 71, 300 Ill.Dec. 399 (4th Dist. 2006), where the court dealt with the issue of determining whether section 10-155 was applicable to improvements, namely a dam, located on underlying land that was determined to be open space. Factually, in Consumers IL, the 117.23–acre property contains a lake created by a large, man-made dam. A fence surrounds the dam, and buoys are in the water with warnings to stay away from the dam. The lake property has been leased to the Vermilion County Conservation District for public purposes. The public uses the lake for recreational purposes such as boating and fishing. The court ultimately held that when sections 10-155 through 10-165 of the Property Tax Code state "land," they refer to the land itself and improvements. Consumers IL, 363 Ill.App.3d at 651-652. The court went on to find that section 10-155 of the Property Tax Code provides for a single assessment value, and thus the improvements do not have their own assessment. Consumers IL, 363 Ill.App.3d at 652. Significantly, the court in Consumers IL found that the improvements were contributing to the open space nature of the land and the man-made lake would not have existed but for the presence of the dam. Consumers IL, 363 Ill.App.3d at 652.

Similarly, in this appeal, the Property Tax Appeal Board finds that the man-made pond is an improvement contributing to the open space nature of the land. In conclusion, the Board finds a reduction in the assessment 7.02-acre assessment of parcel -001 concerning the pond is not justified and the pond is properly assessed with an open space valuation.

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

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: August 19, 2016

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.