



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

APPELLANT: DuPage Airport Authority
DOCKET NO.: 14-03653.001-C-1 & 14-03642.001-C-3
PARCEL NO.: 04-07-100-005

The parties of record before the Property Tax Appeal Board are DuPage Airport Authority, the appellant, by attorneys Phillip Luetkehans and Brian Armstrong, of Schirott, Luetkehans & Garner, P.C. in Itasca, and the DuPage County Board of Review.

Based on the facts and exhibits presented in this matter, the Property Tax Appeal Board hereby finds both **no change** and **a reduction** in the assessments of the property as established by the **DuPage** County Board of Review are warranted.¹ The correct assessed valuations of the properties are:

FAIR CASH VALUE ASSESSMENT

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
14-03642.001-C-3	04-06-400-021	97,980	435,350	\$533,330
14-03653.001-C-1	04-07-100-005	32,190	37,810	\$70,000

OPEN SPACE ASSESSMENT

DOCKET NO	PARCEL NUMBER	LAND	IMPRVMT	TOTAL
14-03642.001-C-3	04-06-400-021	n/a	n/a	\$ n/a
14-03653.001-C-1	04-07-100-005	5,279	0	\$5,279

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeals 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 2014 tax year. The Property Tax Appeal Board (PTAB) finds that it has jurisdiction over the parties and the subject matter of the appeals.

These appeals were consolidated for purposes of hearing due to the commonality of issues and parties for these parcels. (86 Ill.Admin.Code §1910.78) Furthermore, despite the fact that the DuPage County Board of Review was defaulted in each of these appeals for failure to timely file responsive evidence, the PTAB determined that hearings were necessary to sufficiently ascertain

¹ No change is issued as to parcel 04-06-400-021 and a reduction is issued as to parcel 04-07-100-005.

the facts surrounding the appellant's preferential open space assessment argument as to each parcel.

Open Space Case Precedent

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 vacated the decision of the PTAB and remanded the matter with directions. In Onwentsia I the court broadly construed the word "conserve" in section 10-155(d) of the Property Tax Code (35 ILCS 200/10-155(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.

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 PTAB 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.

The court stated that if the PTAB determines that an improvement in this case conserves a landscaped area by facilitating the existence of the golf course, it should grant open-space status to that portion of the taxpayer's property. 2011 IL App (2d) 100388 at ¶19, 953 N.E.2d at 1016. On remand the PTAB was directed to evaluate the improvements to determine whether they

conserve landscaped areas by facilitating the existence of the golf course. 2011 IL App (2d) 100388 at ¶21, 953 N.E.2d at 1017.

Pursuant to the remand, the PTAB evaluated the improvements to determine whether they conserved landscaped areas by facilitating the existence of the golf course and issued its decision on March 23, 2012. The PTAB found that the improvements on the various parcels under appeal including the clubhouse, the swimming pool, tennis facilities, golf learning center, parking lots, caddy shack, maintenance buildings/sheds, driveways and the halfway house for the golf course all facilitate the existence of the golf course. The PTAB found that each of these improvements facilitates the subject property being and remaining a golf course and providing green space in this urban area. Therefore, the PTAB found, in light of the court's remand, that these improvements at issue conserve landscaped areas and are considered open space for assessment purposes. The only improvement that the Board found that did not facilitate the existence of the golf course was the dorm or apartment building on the subject property due to the fact section 10-155 of the Code specifically states in part that, "Land is not considered used for open space purposes if it is used primarily for residential purposes."

The Lake County Board of Review timely filed a petition for administrative review challenging the decision of the PTAB. 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 PTAB and remanded the matter with directions.

In Onwentsia II the court held the PTAB'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. The court asserted that on remand, the PTAB should treat them accordingly. Onwentsia II, 2013 IL App 2d 120429 ¶11.

The court found it less clear with respect to the maintenance buildings, parking lots, driveways and the clubhouse. It explained that, "To a large extent, whether such improvements "conserve"

a landscaped area depend upon what portions of the Onwentsia Club they serve." Onwentsia II, 2013 IL App 2d 120429 ¶12.

Although not setting forth an exhaustive list of relevant factors to consider in determining whether different parts of an improvement conserves open space, the court did indicate the plain language of section 10-155 of the Code provided direction in how to proceed. The court stated:

One of the exceptions set forth in section 10-155 is as follows: "Land is not considered used for open space purposes if it is *used primarily* for residential purposes." (Emphasis added.) (citation omitted) Thus, the legislature manifested an intent to classify improvements with regard to their primary use. (citation omitted) Onwentsia II, 2013 IL App 2d 120429 ¶15.

The court also rejected the taxpayer's argument that consideration should be given to the fact that the generation of revenue by the clubhouse facilitates the existence of the golf course because the revenue is used to maintain the golf course. The court found this rule would be too broad and lead to absurd results. Onwentsia II, 2013 IL App 2d 120429 ¶16.

The court remanded the matter to the PTAB to consider whether the maintenance buildings, parking lots, driveways and clubhouse should receive the preferential open space assessment. The court asserted that: "The PTAB should determine on remand whether there is some substantial nexus . . . between the improvements at issue and the golf course such that the improvements relate directly to the course and facilitate its existence." Onwentsia II, 2013 IL App 2d 120429 ¶18.

Pursuant to the remand, the PTAB evaluated the improvements to determine whether there was a substantial nexus between the improvements at issue and the golf course and issued its Final Administrative Decision on October 24, 2014 as Onwentsia Club, Docket No. 06-00614.001-C-3 through 06-00614.004-C-3. The PTAB found, in pertinent part, that the clubhouse use presented in evidence of 29.5% for golf-specific functions did not qualify the clubhouse for an open space assessment, but structures, such as the maintenance building, that were solely related to golf functions did qualify for an open space assessment in light of the substantial nexus directives of the Appellate Court.

Findings of Fact

The two parcels on appeal are part of a property commonly known as Prairie Landing Golf Course which consists of multiple parcels totaling approximately 297-acres of land. Parcel identification number 04-06-400-021 (hereinafter "PIN -021") consists of 3.5-acres of land which has been improved with a clubhouse building containing 21,921 square feet of building area along with asphalt parking lot facilities.² The clubhouse includes a lower level consisting of cart barns for golf cart storage/maintenance, locker rooms for men and women and a foyer/stairs

² The appellant reported and the board of review at hearing agreed that the subject clubhouse consists of 21,921 square feet of building area including both levels and the mezzanine. The PTAB recognizes that BOR Exhibit 1 depicts the clubhouse as containing 22,341 square feet of building area. Due to the determination in this matter on the contention of law, the PTAB finds this building size discrepancy is ultimately not relevant to the final decision.

connecting this level to the main level; the main level of the clubhouse includes a pro shop, bar/restaurant areas, kitchen, banquet room, banquet office and The Tenth Tee snack shop, among other areas. The clubhouse building also has a 745 square foot mezzanine which is used exclusively for storage as it lacks access compliant with the Americans with Disabilities Act (ADA) mandates. Parcel identification number 04-07-100-005 (hereinafter "PIN -005") consists of 1.15-acres of land area which has been improved with a maintenance building containing approximately 8,000 square feet of building area along with associated parking for maintenance staff. The subject parcels are located in West Chicago, Winfield Township, DuPage County.

The appellant appeared before the PTAB through counsel, Brian Armstrong. In summary, the appellant contended in a legal brief, which was supported by a seven-page affidavit of David Bird, that the maintenance building and its land in its entirety and portions of the clubhouse building (71.5% based upon use by golfers versus 28.5% use for ordinary commercial purposes) and its land should have reduced assessments as preferential open space in light of case precedent. The appellant based these requests upon the assertion that these improvements and the associated land 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 (Code) (35 ILCS 200/10-155).

In support of this legal argument and for purposes of testimony at hearing, the appellant called David Bird, Executive Director of the DuPage Airport Authority (hereinafter Authority) who has held that position since January 2004. In this position, Bird oversees several operations within the Authority including the airport itself, the DuPage Flight center which is a retail fueling facility at the airport, the DuPage Business Center which is a business park operated by the Authority and Prairie Landing Golf Course. In his position, Bird further asserted familiarity with the facilities operated by the golf course entity. (TR. 8-9)³

As to the maintenance building located on PIN -005, Bird stated it was probably about an 8,000 square foot building which is depicted with both exterior and interior photographs marked as Appellant's Exhibits 2 through 10 in Docket No. 14-03653.001-C-1. Exhibit 3 depicts the office of the maintenance supervisor. Exhibit 4 depicts another administrative portion of the building. Exhibits 5, 6, 7, 8 and 9 depict storage areas for tools and equipment. Exhibit 10 depicts a workshop area with additional equipment. Bird testified that the public is not allowed access to the maintenance building which is only accessible to golf course staff members. He further testified that the primary purpose of the maintenance building is to conserve the golf course and the open space of the golf course. Bird contended that the maintenance building facilitates the existence of the golf course and the existence of the open space. Bird also testified in his opinion, the Authority could not operate the golf course and could not preserve the open space without a maintenance building such as this structure. (TR. 9-12)

Bird next testified concerning various facilities located within the two-level clubhouse located on PIN -021 along with two applicable photographs in the record of Docket No. 14-03642.001-C-3. The levels of the building are connected by a stairway/foyer totaling approximately 400 square feet which is used by golfers moving from the locker rooms on the lower level to the upper level.

³ References to the transcript of the consolidated proceedings are denoted herein by "TR." followed by page number reference(s).

The men's and women's locker rooms total about 2,300 square feet of building area. The locker rooms are used only by golfers; Bird opined that Prairie Landing Golf Course could not operate without the locker rooms and/or the stairway connecting the lower level and upper levels of the clubhouse building. He further opined that the primary purpose of both the locker rooms and the stairway is to conserve the open space of the golf course and those areas in fact do conserve the open space of the golf course. Exhibits 2 and 3 are photographs which depict the cart barn containing approximately 7,913 square feet which is located on the lowest level of the clubhouse building. Bird opined that the golf course could not be operated without having the cart barn to store, charge, service and maintain the golf carts. The golf carts are stored in this portion of the facility year-round. Bird agreed that the cart barn conserves the open space of the golf course and the primary purpose of the cart barn is to conserve the open space of the golf course. The upper level of the clubhouse includes the pro shop, banquet room, restaurant and kitchen. (TR. 12-16)

Next, Bird testified concerning the sale of annual memberships which at the level of an "Ultimate Membership" includes an individual permanent locker in the locker room along with an unlimited number of rounds of golf and club storage; memberships can also be individual or corporate; lastly, there is also a practice membership which includes the use of the practice range and practice facility with a set number of range balls. Bird was unable to state how many members the facility had in 2014. The subject golf course is a public course with a daily fee for the public. In addition to access via membership, locker rooms are also available for use by golfers for a daily fee. (TR. 16-18)

The 'main level' of the clubhouse contains 10,559 square feet of building area and consists of multiple dedicated areas as follows (TR. 18-38, 39-40):

- A **pro shop** (2,304 square feet) that is open year-round to accept memberships, sell retail golf-related merchandise and gift certificates. In season, golfers also check in at the pro shop and pay to play round(s). Bird opined that the golf course could not operate without the pro shop which has the primary purpose of facilitating the existence of the golf course and conserves the golf course.
- The **foyer/stairway** that connects the lower level and main level also facilitates the existence of the golf course and conserves the open space according to Bird.
- The **Grill Room** (1,024 square feet) is a restaurant area which serves both golf patrons and non-golfers. The Grill Room is only open from approximately mid-March to mid-November (weather permitting) along with the golf course being open for play. Bird testified that he estimated, based upon revenue and the attire of the customers, approximately 30% of the restaurant's patrons are golfers and 70% are non-golfers.
- The **bar area with a service kitchen** (400 square feet) serves appetizers/snacks to both golf and non-golf patrons. Bird testified again the usage was again split as 30% golfers and 70% non-golfers. The witness also opined that the bar/service kitchen conserves the open space of the golf course.
- The clubhouse also has a **sunroom** (709 square feet) located between the Grill Room and the banquet room; this area is typically used for individual events of 10 to 12 participants. The sunroom is used by both golfers and non-golfers at a similar 30/70 split like the other facilities. Bird opined that use by the golfers serves the existence of the golf course,

facilitates the existence of the golf course and conserves the open space of the golf course.

- The **banquet room** (3,300 square feet) on the main level of the clubhouse has a 200-person capacity and is used for large groups such as weddings, receptions and banquets, including luncheon golf outings, dinners and award ceremonies. Also, occasionally if the Grill Room is full, patrons may utilize the banquet room if it is not otherwise reserved. The use of the banquet room fluctuates throughout the year, but Bird testified that golfers use the banquet room 28% of the time and the remainder of use is attributable to non-golfers. The use of the banquet room by golfers facilitates the existence of the golf course and conserves the open space of the golf course according to Bird.
- There is a 1,135 square foot **kitchen** on the main level of the clubhouse which is used for food preparation for both golfers and non-golfers both for the Grill Room and the banquet room; Bird opined the use of the kitchen to be 30% by golfers and 70% by non-golfers with the 30% use by golfers facilitating the existence of the golf course and helping to conserve the open space of the golf course. Bird testified that golfers expect to have the ability to purchase food and/or drink before and/or after playing golf.
- There is a **banquet office** (252 square feet) used by the staff to host potential clients/users of the banquet room facility. Bird attributed use of the banquet office as 28% by golf related activities and 72% by non-golf events as set forth in a previously filed affidavit in this proceeding. The witness contended that the use by golfers facilitates the existence of the golf course and conserves the open space of the golf course.
- There are **restroom facilities** (936 square feet) on the main level of the clubhouse used by both golf patrons and non-golf patrons. Bird opined that 30% of the use of the restrooms is for golf purposes which facilitates the existence of the golf course and helps conserve the open space of the golf course.
- "**The Tenth Tee**" (99 square feet) is an area where golfers between two nine-hole rounds of golf can stop for a drink and/or a snack, such as a hot dog. This facility is used exclusively by golfers and facilitates the existence of the golf course by conserving the open space of the golf course.

Bird contended that persons who play rounds of golf expect the facility to have certain amenities such as "The Tenth Tee," restrooms and food/drink facilities. Although it may be possible to operate the golf course without these amenities, he opined that it would be difficult to do so and would be detrimental to not have these amenities. The primary purpose of the amenities is to serve the existence of the golf course and to conserve the open space of the golf course. Bird testified that all of the revenue generated by the golf course operations goes back into the maintenance and operation of the golf course. (TR. 25, 38)

The subject clubhouse facility also has a mezzanine level (745 square feet). Bird testified this area is not accessible under ADA guidelines and has been taken out of service for the public; this area is used solely for storage. (TR. 38-39)

The Administrative Law Judge (ALJ) made inquiries of the witness concerning the submission of an annual application for an open space assessment classification. Bird asserted that he is responsible for making the annual application and that an application was made for 2014, although he did not have a copy of the application at the hearing. The golf course was opened in

1994 and Bird believed that prior to 2014 the property was afforded an open space assessment "up until a certain point." While Bird was unsure if the subject property has been given an open space assessment since tax year 2014, the appellant's counsel indicated that the golf course has been granted an open space assessment. (TR. 43-44)

Based upon the foregoing evidence and argument, the appellant requested reductions in both the land and improvement assessments of the two subject parcels, PIN -021 and PIN -005, in light of the Onwentsia decisions concerning open space assessments applicable to golf course properties.

The board of review failed to timely submit its "Board of Review Notes on Appeal" and was held to be in default in each of these appeals by a letter issued on March 29, 2016.⁴

In order to fully develop the record in these appeals, the PTAB obtained the testimony at hearing of Craig Dovel, the Supervisor of Assessments/Chief County Assessment Officer (CCAO) of DuPage County, based upon questions posed by the ALJ. Dovel has held the CCAO position since August 2001 and he holds the Certified Illinois Assessment Officer (CIAO) designation from the Illinois Property Assessment Institute (IPAI). He has also obtained an assessment administration specialist designation from the International Association of Assessing Officers (IAAO). (TR. 47-48)

Copies of the property record cards for the subject parcels were produced at the request of the ALJ and marked as BOR Exhibits #1 and #2 for PIN -021 and PIN -005, respectively. Dovel deferred all questions concerning details of the subject parcels as depicted in the property record cards to Mark Malay, the Winfield Township Assessor, responsible for those documents. (TR. 48-50)

At the request of the ALJ, Dovel described the process for property owners to make application in DuPage County for an open space or dual valuation for tax year 2014. He testified the deadline for filing an application under section 10-160 of the Code would have been approximately June 30, 2014 (35 ILCS 200/10-160). Upon receipt of an application, Dovel reviews the application along with available public records. He then makes a determination of whether or not he "felt that the property in question under application met the criteria for open space." Dovel further testified that if he needed additional information, such as a physical inspection or acquiring other records, he would "do so" in that process. Once Dovel made a determination whether or not the property qualified for open space, he would "preserve for public record the original assessment prepared by the township assessor as equalized" by his office, but would also enter into the assessment books a second or dual valuation. This dual valuation represents the area Dovel believes qualifies for the open space valuation, assessed as required by the Code to ensure that property receives the benefits of the dual valuation. (TR. 50-51)

⁴ As to Docket No. 14-03642.001-C-3, the board of review timely filed its Certificate in accordance with the requirements of section 16-180 of the Code (35 ILCS 200/16-180) and the procedural rules of the PTAB (86 Ill.Admin.Code §1910.40(f)) wherein it was reported that on October 2, 2015, a copy of the petition was served upon all taxing districts as shown on the last available tax bill. No taxing body intervened as provided for in the procedural rules of the PTAB (86 Ill.Admin.Code §1910.60(d)).

Dovel testified that he has no records of receiving an application for open space valuation from the subject property [owners] for tax year 2014. When asked if Dovel had received applications for open space valuation for the subject property prior to 2014, he testified that he has "personal knowledge of receiving applications on portions" of the subject Prairie Landing Golf Course. "I do not have personal knowledge of receiving any applications for the two parcels as they are currently delineated on the parcel numbers." He further explained that Prairie Landing was subject to a land division in approximately 2012/2013 at which time Dovel "had received and acted upon timely filed open space applications" for the golf course 'proper'; he further testified that the property owner had not requested [open space] relief for the two parcels that are the subject matter of these appeals concerning the clubhouse and the maintenance building for any tax year. (TR. 51-53)

In light of prior appeals on open space applications in DuPage County that have been decided by the PTAB, Dovel was asked to explain his practice and procedure when an open space application has not been made by a property owner. Dovel stated:

If something that's prima fascia indicates to me that the property is an open space use and has – I've had prior applications on file, and I have acted – I have granted open space valuation in the instances where I think a reasonable person could argue that portions of the subject property may or may not qualify for open space, and I've not received an application, I have not taken it upon myself to overtly grant open space valuation.

(TR. 53)

Dovel did not dispute the summary of his prior testimony in Royal Tee, LLC, Docket No. 11-03322.001-C-3 through 11-03322.002-C-3. Even without an open space application filed by June 30, 2011, when there had been a prior open space application for a parcel and the parcel had previously received the preferential open space valuation on the portion devoted to the practice green, Dovel had a long-standing policy for existing properties where the use has been established as open space and a history of prior applications was in place, he had not "penalized an individual for failing to file an open space application during the tax cycle." Royal Tee, LLC, Docket No. 11-03322.001-C-3 through 11-03322.002-C-3 (Decided March 20, 2015). (TR. 54-55)

Dovel asserted that prior to the Appellate Court decision(s) in Onwentsia, he removed any areas that were covered by a non-permeable improvement such as a parking lot, building, tennis courts, a swimming pool, anything that basically at that time did not meet the standard of preserving and conserving open space land. As to the Authority, Dovel "granted open space to the green spaces that were – basically made up the golf course." (TR. 56-57)⁵

⁵ Dovel further expounded that the dual valuation for the subject property consisted of two components: (1) the green space (not covered by an improvement) which would be granted a dual valuation based upon acreage and the applicable open space rate at that time and (2) areas that were covered by an impermeable improvement such as parking lots or buildings was not included in the dual valuation he applied. For those impermeable improvement areas, Dovel retained the original value as equalized and set by the township assessor. (TR. 57)

As assessed for tax year 2014, PIN -021 with the clubhouse improvement had a land assessment of \$97,980 and an improvement assessment of \$435,350 with no preferential open space assessment, according to Dovel. (TR. 57-58)

Upon cross-examination, counsel for the appellant made further inquiry of the DuPage County practice that was articulated in the Royal Tee case before the PTAB. The precedent indicates that parcels may receive a preferential open space valuation in DuPage County, even in the absence of an application having been made by the property owner. Dovel testified that he has provided preferential open space valuations for several years prior to 2014 "if certain criteria is met." The criteria includes (1) receipt, in the past, of an application where the property owner asserted the parcel met the requirements for open space and (2) where Dovel had an opportunity to perform his due diligence to examine whether the property did or did not meet the criteria for open space. (TR. 60-61)

As to the subject golf course, Dovel asserted that he has never received an application requesting an open space valuation for the clubhouse or the maintenance building parcels; prior to 2014, Dovel has received applications on the "green spaces." Dovel further acknowledged that in the past and to the present day, he has applied the preferential open space valuation(s) to portion(s) of the Prairie Landing Golf Course in the absence of application(s) for open space valuation from the owners. (TR. 61-62)

When questioned by counsel for the appellant concerning the expectation of preferential treatment even in the absence of an application, Dovel opined that as a property owner who had not received preferential treatment on the clubhouse or the maintenance building, "I would expect that I would have to take overt action to secure that preferential treatment." Dovel agreed that the property owner could expect preferential treatment for areas that had previously been granted open space, even in the absence of an application. While Dovel historically made distinctions between areas containing green space and areas that did not contain green space, after the Onwentsia cases that differentiation is no longer correct as there are now "new rules." Under the criteria established by these court decisions, according to Dovel, the property owner needs to demonstrate the nexus between the golf course use and the improvement in question in order to be eligible for open space valuation on non-green space areas. Dovel agreed that the type of testimony/evidence presented at today's hearing would be the information he would consider with an application for open space valuation. (TR. 62-64)

The ALJ further questioned the witness. Dovel acknowledged that both the Royal Tee and Cress Creek⁶ properties in DuPage County that resulted in appeals before the PTAB for tax years 2011 and 2012 were considered for open space qualification even in the absence of an application. (TR. 65-66)

For tax year 2014, open space in DuPage County was afforded a valuation of \$4,590 per acre. (TR. 69)

⁶ Cress Creek Golf Club, Inc., Docket No. 12-03679.001-C-3 through 12-03679.002-C-3 (Decided November 10, 2015 and Amended on April 22, 2016).

The PTAB also called Mark Malay, Winfield Township Assessor, in order to more fully develop the record and address questions related to the subject property record cards which he maintains and which Dovel was unable to address. (TR. 66)

Malay has been employed with the Winfield Township Assessor's Office since 1988 and is familiar with the subject property which is within his township's jurisdiction since its creation in 1994. Malay did not know how many parcels comprise the Prairie Landing Golf Course. In examining the available property record cards for the subject parcels, BOR Exhibits 1 and 2, Malay noted the documents would not depict the size of the parking area(s). (TR. 48-49, 66-68)

For rebuttal evidence, the appellant recalled David Bird, who reiterated that he believed he had filed an application for open space valuation for the subject parcels on appeal. Without conceding, but if no application was filed, Bird relied upon the assessor's previous action of granting open space valuation to the golf course even in the absence of an application. (TR. 71-72)

In closing, counsel for the appellant requested reductions to the subject parcels in accordance with the testimony presented as to the nexus between the clubhouse and conservation of the open space along with the maintenance building being used solely to conserve the open space. In the alternative, counsel argued equitable estoppel since there has been affirmative action by the governmental body (granting of open space in the absence of an application) and reliance by the taxpayer/operator of the golf course. (Citing Patrick Engineering, Inc. v. City of Naperville, 2012 IL 113148). (TR. 74-75)

Supplemental Documentation

The DuPage County Board of Review, prior to and in the course of the hearing, was ordered to produce a breakdown of all the improvements present on the two parcels on appeal, the assessments assigned to each, the applicable dual assessments and the open space value applied for tax year 2014. The order made at hearing was necessitated by the failure of the DuPage County Board of Review to comply with a directive issued by e-mail on April 3, 2019 that ordered as follows:

. . . the assessing officials shall produce at the time of hearing a complete property record card for each of the subject parcels along with a breakdown of the assessments applied to individual structures along with a breakdown or calculation of the land assessment applied to each of the parcels on appeal.

(TR. 59, 68, 70; E-mail to all parties dated 4-3-19) The DuPage County Board of Review's supplementary documentation was submitted after hearing by e-mail distribution to all parties of record simultaneously.

The DuPage County Board of Review on May 3, 2019 forwarded documentation to the PTAB and the appellant's counsel. The data included a one-page letter from Dovel along with attachments outlining the parcels which comprise the subject golf course property,⁷ property

⁷ Before a 2013 land division, there were seventeen parcels comprising the golf course property.

record cards for each of the parcels which contain very little substantive descriptive information and documentation related to a 2013 land division referenced in Dovel's letter.

As set forth in the letter, the Supervisor of Assessments Office received application(s) and granted open space preferential valuations for portions of the parcels comprising the golf course. Dovel further reported that after the 2013 land division, he has no record of receiving open space application(s) for the Prairie Landing Golf Course. However, for tax year 2013 and onward, Dovel has maintained the open space and non-open space allocations for the golf course without either expanding or narrowing the previously established allocations.

As presented and as of tax year 2014, there are five parcels which comprise the Prairie Landing Golf Course property. Two of the five parcels are the subject matters of this consolidated appeal. As set forth in the board of review's limited submission, the parcels which are the subject matter of this consolidated appeal for tax year 2014 did not have any preferential open space valuations.

Conclusion of Law

The issue in these consolidated appeals deals with application of the section 10-155 of the Code, the open space statute, to the subject golf course and its improvements of the clubhouse (PIN - 021) and maintenance building (PIN -005). 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.... (35 ILCS 200/10-155).

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.

Although it appears to be incongruous that land with building improvements can be considered "open space" the court has so construed section 10-155 of the Code.⁸ (See also Consumers IL Water Co. v. Property Tax Appeal Board, 363 Ill.App.3d 646, 844 N.E.2d 71, 300 Ill.Dec. 329 (4th Dist. 2006)).

The appellant made a contention of law as the basis of the appeal in each of these appeals concerning improved parcels which contain, respectively, the clubhouse building/parking lot and the maintenance building with a parking lot. 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 PTAB 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.

The Board finds in this matter, where the DuPage County Board of Review has been defaulted, that the appellant did not dispute the open space value utilized by the DuPage County assessment officials of \$4,590 per acre or an assessed value of \$1,530 per acre. Nor did the appellant submit any evidence challenging the value computations associated with the various improvements on the subject parcels or associated with the market value of the land which was not receiving an open space assessment.

Evidence as to each parcel on appeal will be discussed separately.

⁸ Black's Law Dictionary provides a common definition of "open space" as:

Undeveloped (or mostly undeveloped) urban or suburban land that is set aside and permanently restricted to agricultural, recreational, or conservational uses. The land may be publicly or privately owned. Access may be restricted or unrestricted. Open spaces are not necessarily in a natural state: the term includes land used for public parks, gardens, farms, and pastures. But it does not include structures such as parking lots, swimming pools, or tennis courts. Black's Law Dictionary 1200 (9th ed. 2009).

Parcel with Clubhouse (-021)

David Bird, Executive Director of the DuPage Airport Authority testified to the use of the clubhouse for the Prairie Landing Golf Course. The testimony provided by Bird established that the clubhouse is an integral part of the Prairie Landing providing areas for golfers to change, pay fees, shop and also has significant facilities devoted to dining and beverages along with rental space for banquets. Bird provided testimony concerning each of the areas of the clubhouse. Without reiterating his entire testimony set forth earlier, Bird indicated four areas of the clubhouse building along with the connecting stairway that were solely used by golfers were: the pro shop, the cart barn in the lower level, the locker rooms, the foyer/stairs between the lower level and main level and the "Tenth Tee" snack bar on the main level.

Based upon Bird's observation of the patrons, he specified the amount of use attributable to golf patrons and the amount of use attributable to non-golf patrons. As to the entire clubhouse facility, he placed approximately 71% of the use as being by non-golf patrons/users and approximately 29% is attributable to use exclusively by golfers. For instance, Bird noted that the banquet room hosts various golf-related events, but also hosts meetings, receptions, weddings and parties. For the banquet room use, Bird attributed 28% of use to golf events and 72% to non-golf patron events.

Based on the testimony from Bird, the PTAB finds approximately 29% of the clubhouse has a golf specific use and 71% of the clubhouse has multiple non-golf related uses. Furthermore, the area devoted to golf specific use is apparently open or used for approximately eight months or 66% of the year (mid-March to mid-November), depending on weather conditions that allow for the playing of golf on the course. For approximately 4 months or 33% of the year (mid-November to mid-March), the golf specific area is not used for golfing purposes. Based on this evidence and testimony concerning the building area and the annual use, the PTAB finds the clubhouse is not used primarily for golf specific purposes and does not directly relate to and facilitate the existence of the golf course. The PTAB finds there is not a substantial nexus between the clubhouse and the golf course or the landscaped area it is claimed to conserve. (See Onwentsia Club, Docket No. 06-00614.001-C-3 through 06-00614.004-C-3 (Final Administrative Decision of the PTAB issued on October 14, 2014)).

With respect to the proportional uses of the clubhouse, the PTAB finds the plain language of section 10-155 of the Code does not provide for a prorated improvement assessment. When property is found to be open space, the value is to be calculated based on, "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." (35 ILCS 200/10-155). Moreover, the Property Tax Code only provides limited circumstances for a proportionate improvement assessment such as in the case of new construction or uninhabitable property. (See sections 9-160 and 9-180 of the Property Tax Code (35 ILCS 200/9-160 & 9-180)). Neither situation is present under the facts of this appeal. Additionally, the Property Tax Code provides for a proportionate assessment during the tax year when a property becomes exempt or loses its exempt status as provided in Title 4 of the Code (35 ILCS 200/Title 4) based on a change of use or ownership during the year, a fact again not present in this appeal. (See section 9-185 of the Property Tax Code (35 ILCS 200/9-185)). The subject

property has not been granted an exemption under Title 4 of the Property Tax Code but is receiving a preferential dual assessment due to its open space status.

The PTAB finds that the testimony of Bird established that the use of the clubhouse for not only golf specific purposes which purportedly preserves and conserves the golf course but the other activities throughout the year. The PTAB recognizes that the court in Onwentsia II held the consideration of revenue generation by the clubhouse as a decisive factor to determine whether this improvement facilitates the existence of the golf course would be too broad and lead to absurd results. Onwentsia II, 2013 IL App 2d 120429 ¶16. Therefore, the PTAB finds in light of the minimal 29% golf-related use, the evidence in this record clearly establishes that there is no substantial nexus between the clubhouse and the landscaped area it is claimed to conserve. In conclusion, the PTAB finds the clubhouse and the underlying land does not qualify for an open space assessment.

With respect to the parking areas at the Prairie Landing Golf Course, the inference from the testimony was that the parking is used not only for the clubhouse but in conjunction with the other facilities at the club, including the banquet hall and restaurant, such that the use was again attributed 29% to golfers and 71% to non-golf patrons. In summary, the parking is used not only for golf but for other events at the clubhouse. Given this record, the PTAB finds it was not established that the primary use of the parking was for golf specific activities. Furthermore, based on the PTAB's findings that the clubhouse does not qualify for an open space assessment, the PTAB finds the parking associated with the clubhouse does not qualify for an open space assessment.

Based on this record, the PTAB finds, in light of the last of the Onwentsia decisions issued by the PTAB, the appellant failed to establish a substantial nexus between the clubhouse (PIN -021) and the open space of the golf course. The testimony presented by the appellant was consistent that no more than 30% of use of the clubhouse could be attributed to use by golfers. The appellant did not meet the burden of proof on this record as to the request for a preferential open space assessments to the parcel which includes the clubhouse (PIN -021).

Parcel with Maintenance Building (-005)

Based on the evidence and testimony presented, the PTAB finds the primary use of the maintenance building is directly related to and facilitates the existence of the golf course. The PTAB finds the appellant presented the testimony of David Bird, Executive Director of the DuPage Airport Authority, that the maintenance building is used for storage and maintenance of the equipment used to maintain the golf course and open space. He also identified various photographs that depicted the interior of the maintenance building and associated offices. Besides the office areas, the photographs depict both lawn/grass equipment and golf carts along with tools. Bird's testimony was that the maintenance building stores various equipment and tools used to maintain the golf course and is accessed solely by golf course maintenance staff. The maintenance building is located on PIN -005 which consists of 1.15-acres of land area.

The PTAB finds the primary use of the maintenance building directly relates to and facilitates the existence of the golf course. The PTAB finds the testimony and exhibits established a substantial nexus between the maintenance building and the keeping and preservation of the

landscaped golf course area. The PTAB finds there is a direct relationship between the primary use of the maintenance building and the existence of the golf course.

Based on this record, the PTAB finds the appellant met the burden of proof and the maintenance building and its associated land located on PIN -005 qualifies for the open space assessment under the precedent set by the PTAB's Final Administrative Decision in Docket No. 06-00614.001-C-3 through 06-00614.004-C-3, Onwentsia II and its precursors.

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. Pursuant to Section 1910.50(d) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.50(d)) the proceeding before the Property Tax Appeal Board is terminated when the decision is rendered. The Property Tax Appeal Board does not require any motion or request for reconsideration.

Chairman



Member



Member



Member



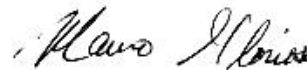
Member

DISSENTING: _____

CERTIFICATION

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: October 15, 2019



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 or years of the same general assessment period, as provided in Sections 9-125 through 9-225, 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 such subsequent year or years 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 OR YEARS. A separate petition and evidence must be filed for each of the remaining years of the general assessment period.

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.

PARTIES OF RECORD

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