



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

APPELLANT: Wessel Court East LLC
DOCKET NO.: 19-02440.001-C-2
PARCEL NO.: 11-12-376-004

The parties of record before the Property Tax Appeal Board are Wessel Court East LLC, the appellant, by attorney Jeffrey G. Hertz, of Sarnoff & Baccash in Chicago; and the Kane County Board of Review.

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

LAND: \$104,827
IMPR.: \$446,427
TOTAL: \$551,254

Subject only to the State multiplier as applicable.

Statement of Jurisdiction

The appellant timely filed the appeal from a decision of the Kane County Board of Review pursuant to section 16-160 of the Property Tax Code (35 ILCS 200/16-160) challenging the assessment for the 2019 tax year. The Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal.

Findings of Fact

The subject parcel consists of approximately 55.39 acres and is part of a multi-parcel property that was formerly operated as a golf course known as Mill Creek Golf Club. The subject parcel includes 53.95 acres of golf course land area and 1.44 acres that is improved with a one-story clubhouse building with 11,404 square feet of building area. The building was constructed in 1998 and contains a lobby, a pro shop/bar, banquet hall facilities, restrooms, locker rooms, and storage areas. The building also has a basement, a patio, and a deck. The subject property is also improved with a parking lot that is situated on a portion of the 53.95 acres and a portion of the 1.44 acres. The subject is located in Geneva, Blackberry Township, Kane County.

The appellant's appeal is based on a contention of law that the portion of the subject property associated with the clubhouse should receive an open space assessment as provided by Section 10-155 of the Property Tax Code. (35 ILCS 200/10-155). In support of this argument, the

appellant submitted a brief explaining that the appellant's tenant previously operated a golf course at the subject property. The appellant acknowledged that the subject property "has been completely closed to golf and non-golf use for 2019." Nonetheless, the appellant contended that a significant portion of the first floor of the clubhouse, such as the pro shop and locker rooms, and the entire basement area directly support and facilitate the existence of the golf course and should be assessed as open space, citing to Section 10-155 of the Property Tax Code and Lake County Board of Review v. Ill. Prop. Tax Appeal Bd., 2013 IL App (2d) 120429. The appellant submitted a floor plan of the building, depicting a lobby, pro shop/bar, patio, banquet facilities, and restrooms.

The appellant also presented a 2013 final administration decision of the board of review on the appellant's Application for Valuation as Open Space. In making its determination, the board of review stated it relied on the appellate court's decision in Lake County, quoting "there must be some substantial nexus between the land for which the exemption is claimed and the landscaped area it is claimed to conserve." The board of review reported that the banquet facilities are open to the general public for non-golf related events and the restaurant is open to the general public for non-golf related dining. Based on the foregoing, the board of review concluded for the 2013 tax year that 1.44 acres of the subject's land, which is improved with the clubhouse and a portion of the parking lot, did not qualify for an open space designation because there was no substantial nexus to the remaining land, which was being utilized as a golf course and did qualify for an open space designation.

Based on this evidence, the appellant requested a reduction in the subject's assessment to \$376,780.

The board of review submitted its "Board of Review Notes on Appeal" disclosing the total assessment for the subject of \$551,254. In support of its contention of the correct assessment the board of review submitted a brief explaining the subject property has not been used as a golf course since 2018. The board of review stated that the other parcels comprising the former golf course and 53.95 acres of the subject property continue to be assessed as open space at \$1,667 per acre, which would reflect a market value of \$5,000 per acre. The board of review explained these land areas assessed as open space have no buildings but are improved with fairways, greens, bunkers, rough, and water hazards. With respect to the 1.44 acres improved with the clubhouse, the board of review, considering the Lake County case, concluded that the 1.44 acres did not qualify for an open space designation because the property was not used for open space purposes or for any purpose in 2019. The board of review acknowledged that a golf course clubhouse could qualify for open space designation, where it was used to prepare for golf, purchase golf supplies, and buy refreshments for consumption while golfing, but not like in this case where the clubhouse was not being used to support golfing or for any other purpose.

The board of review presented aerial photographs of the subject property, depicting the presence or absence of golf carts and vehicles from 2001 to 2019, and undated photographs taken by the township assessor, depicting the exterior and interior of the clubhouse building, including golf course supplies, kitchen supplies, and banquet hall furniture stored in the basement.

The board of review also submitted an article from the Kane County Chronicle dated April 1, 2018, which reported that a sign posted on the subject's clubhouse door and the golf course's website advised that the Mill Creek Golf Club was closed for the season.

Based on this evidence, the board of review requested confirmation of the subject's assessment.

Conclusion of Law

The appellant's argument is based on a contention of law regarding the interpretation and application of section 10-155 of the Property Tax Code (35 ILCS 200/10-155). The standard of proof on a contention of law is a preponderance of the evidence. (See 5 ILCS 100/10-15). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

This appeal involves the application of Section 10-155 of the Property Tax Code to the 1.44 acre portion of the subject property, including the clubhouse. The open space designation of the subject's remaining 53.95 acres is not at issue in this appeal.

Section 10-155 of the Property Tax Code provides as follows:

Sec. 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 (emphasis added). A landscaped area, such as golf course, is one of the specified uses that qualify for open space designation as set forth in Section 10-155(d) of the Property Tax Code.

Improvements may be valued as open space where “there is some substantial nexus between the land for which the exemption is claimed and the landscaped area it is claimed to conserve.” Lake County Bd. of Review v. Ill. Prop. Tax Appeal Bd., 2013 IL App (2d) 120429, P10. With respect to a golf course, “the improvement in question must directly relate to and thus facilitate the existence of the golf course.” Id. Tax exemptions, such as the open space exemption under Section 10-155 of the Property Tax Code, are to be construed narrowly and the taxpayer has the burden to prove an exemption. Id.

In the Lake County case, the appellate court stated that mixed use improvements, such as a maintenance building, should be examined for how they facilitate the existence of the golf course (i.e., whether lawn mowers or pool cleaning supplies are stored in the maintenance building). Id. at P12. Portions of an improvement can separately qualify for open space designation where “different parts of an improvement may be easily discernable and severable for the purpose of ascertaining whether a portion conserves open space while another does not.” Id. at P14. If separation is not possible, then the improvement should be classified according to its primary use. Id. at P15.

The appellant contended that a significant portion of the first floor of the clubhouse and the entire basement of the clubhouse facilitated the existence of the golf course, but the appellant also acknowledged in its brief that the golf course was not operated in 2019 and the subject property was not used for any purpose in 2019. The board of review argued that the subject property was not used for open space purposes in 2019 inasmuch as the golf course ceased to operate in 2018. In written rebuttal, the appellant did not refute the board of review’s contention that the subject property has not been used as a golf course since 2018. Accordingly, the Board finds the subject property has not been used as a golf course since 2018 and was not used for any purpose in 2019.

Despite the closure of the golf course, the subject property could still qualify for an open space designation to the extent it conserves landscaped areas. The board of review confirmed that 55.39 acres of the subject property and the other parcels comprising the former golf course continue to be assessed as open space. The appellant did not present any evidence to demonstrate how any portion of the 1.44 acres improved with the clubhouse and associated parking lot contributed to the conservation of the landscaped areas, the former golf course. The appellant only argued a prior use in connection with the golf course that closed in 2018, which contention

was also not supported by any evidence, such as descriptive details of the clubhouse areas and their uses. Thus, the Board finds the 1.44 acres did not conserve landscaped areas nor did this area facilitate the existence of landscaped areas in 2019.

Under Section 10-155 of the Property Tax Code, “land which is used for open space purposes” may qualify for an open space designation. Accordingly, property which has ceased to be used for open space purposes will not qualify for an open space designation. Although Section 10-155 of the Property Tax Code also has 3-year use requirement, the appellant cannot rely solely on historical use.¹

Based on this record, the Board finds that no portion of the 1.44 acres, which includes the clubhouse and a portion of the subject’s parking lot, qualifies for an open space designation under Section 10-155 of the Property Tax Code, and a reduction in the subject’s assessment is not justified.

¹ The Board notes that there is no evidence in the record to indicate that the 1.44 acres was historically assessed as open space. To the contrary, the appellant presented a 2013 decision of the board of review concluding that the 1.44 acres did not qualify for an open space designation.

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:

November 22, 2022



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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