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## Lawpulse

### Bill would eliminate "open-space" tax exemptions for recreational buildings

By Adam W. Lasker

Should a busy clubhouse connected to a golf course be treated as "open space" and taxed at a low rate? Proposed legislation would end the judicially-created exemption.



A bill has been introduced in the House of Representatives that would amend the Illinois Property Tax Code to eliminate tax exemptions for structures that are connected to and supportive of private "open space land."

The proposal essentially asks tax assessors to call a spade a spade by no longer calling a golf course clubhouse "open space" for taxing purposes simply because it sits on property adjacent to a landscaped area.

House Bill 1053, sponsored by Reps. Ed Sullivan Jr. and Barbara Flynn Currie, would amend section 10-155 of the Tax Code, which allows for a substantially lower tax valuation of "open space land" that is used exclusively to enhance natural or scenic areas; protect streams, marshes, and wildlife; and conserve forests, soil, wetlands, beaches, and "landscaped areas, such as public or private golf courses." 35 ILCS 200/10-155.

Tax attorney Scott L. Ginsburg, a partner in the Chicago firm of Robbins Schwartz, said the open-space exemption statute has for years been construed to apply to structures adjacent to, but definitely not a part of, private golf courses and other properties that qualify under the statute as "open space land." This commonly includes clubhouses, tennis courts, swimming pools, parking lots, and other man-made structures that, according to Ginsburg, have a much higher per-acre fair market value than the true "open space" to which they are connected.

"These clubhouses might be the main gathering sight in some communities, the main wedding site, the place where lawyers hold their retirement parties," Ginsburg said. "The purpose [of the statute] is to use the low tax as an incentive to keep the land as open space.... But these clubhouses, they act like commercial banquet halls, so they should be assessed like commercial banquet halls."

### ***Onwentsia Club v. Illinois PTAB***

Ginsburg said the interpretation of the open-space exemption to include commercial and recreational buildings is "just ridiculous" and the Illinois Property Tax Appeal Board has fought against that "poor reading" of the law. Yet the broad interpretation was recently upheld in an appellate court decision that Ginsburg believes is the impetus behind HB 1053.

In 2011, the second district appellate court reversed the PTAB in an open-space decision involving Onwentsia Club, a private golf club in Lake Forest that occupies about 180 acres divided into 10 different tax parcels. *Onwentsia Club v. Illinois PTAB et al.*, 2011 IL App(2d) 100388, [953 N.E.2d 1010](#). [953 N.E.2d 1010](#).

Most of Onwentsia's land consists of an 18-hole golf course, but 8.72 acres of the club's property are occupied by a clubhouse, swimming pool, horse stable and riding facility, parking lot, driveway, and tennis courts. Both the Lake County Board of Review and the PTAB denied open-space status to most portions of the land, claiming that "only those portions of the subject [parcels] actually used to conserve landscaped area satisfy the definition of open space land within the statute."

The PTAB further found that, notwithstanding the fact that certain improvements are "used in association with the commercial/business purpose of Onwentsia Club," they are not used to "conserve landscaped areas."

Onwentsia appealed the PTAB decision and the court reversed, finding that some man-made structures and buildings might help conserve landscaped areas by providing an economic means for the truly open open-space land to avoid further development.

"In this opinion, we have limited our inquiry to the meaning of section 10-155; what remains are factual determinations regarding the nature of the improvements on petitioner's property," the unanimous appellate panel wrote. "On remand, those improvements should be evaluated to determine whether they conserve landscaped areas by facilitating the existence of the golf course."

Ginsburg, however, said most structures supporting a private golf course are inherently commercial, and should be taxed as such despite their relationship to open space land that is entitled to the exemption. Perhaps the garage in which the mowers and other maintenance machinery is stored facilitates the existence of the golf course, but Ginsburg said recreational facilities ancillary to the golf course itself ought to be taxed in accordance with their primary purposes.

## Revenue in hard times

In response to the appellate court's *Onwentsia* decision, the PTAB reversed its decision and granted open-space status to all of Onwentsia's property. Ginsburg said Lake County's chief tax assessment officer, Martin Paulson, has appealed the new PTAB decision and that decision remains pending.

Ginsburg said Paulson also teamed up with LaSalle County chief assessment officer Linda Kendall to form a consortium of other assessors making a collective push for a legislative fix to a court decision that could create major revenue problems in counties already strapped for cash.

"Somehow they got the attention of these legislators to put it through the process and it looks like it's going to get passed - it seems to have a lot of support already," Ginsburg said. "It's a little surprising because the legislature contains a lot of taxpayers' attorneys who would benefit" from the appellate court's interpretation of the law.

Ginsburg said that House Speaker Michael Madigan and Senate President John Cullerton both run their own tax-law law firms that might be negatively impacted by the passage of HB 1053. Nonetheless, in the hard economic times facing all governments in recent years, the potential tax-revenue benefits to counties and municipalities seem to be a priority to members of the current General Assembly, he said.

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