

The Works

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The Poor, Poor Park Grill

Even if they end up paying property taxes, they still have a ridiculously good deal.

By Ben Joravsky

James Horan and Matthew O'Malley, the well-connected proprietors of the Park Grill restaurant in Millennium Park, got a sweet deal. In 2003 they signed a 30-year contract with the Park District that allowed them to pay relatively little for the right to operate a restaurant, a souvenir shop, a bakery, and several kiosks and concession carts in the park. The deal was so sweet it drew lots of attention from the media—and from the county tax assessor. Now they're about to get hit with a big property tax bill, even though Park District concessionaires rarely pay property taxes.

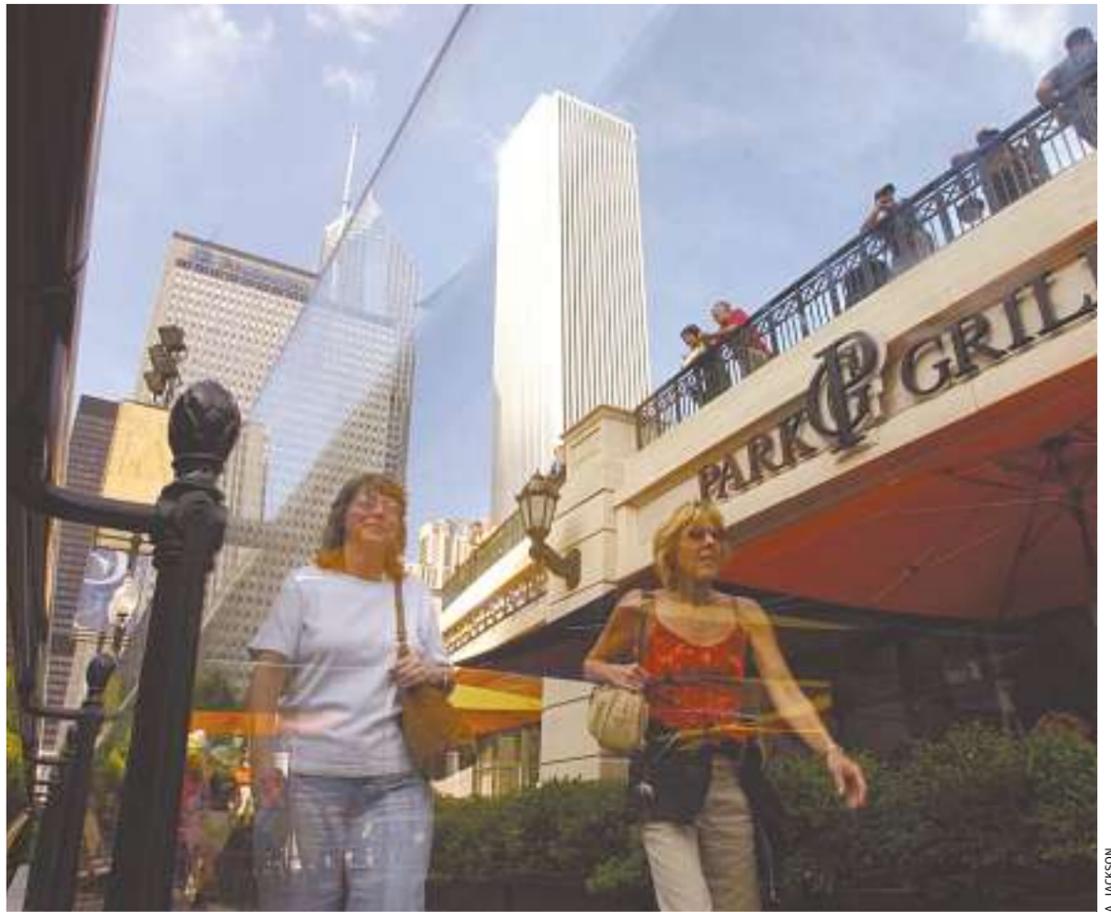
As I wrote in February, the Park Grill soap opera began in October 2001, when the Park District selected Horan and O'Malley for the restaurant contract, even though two rivals were offering to pay more for the privilege. After many months of negotiating, the Park District signed a contract giving Horan and O'Malley the exclusive right to operate the restaurant and other concessions, as well as the right to hold private concerts and admission-only special events in Millennium Park's "concession area," which is roughly everything west of the Pritzker Pavilion. Last summer the Park Grill held a smooth-jazz series in the concession area, and in the fall it had an Oktoberfest event, charging admission for both. The Park District also agreed to pay for the Park Grill's gas, water, and garbage collection.

It's still not clear exactly what Horan and O'Malley are supposed to pay in return. The contract states that they have to pay either an annual minimum fee of \$275,000 or a percentage of their gross, whichever is higher. But because the two paid to build the restaurant, the minimum fee has

been temporarily waived, and they're paying a percentage of their gross. Between opening day, in December 2003, and March 2005 they paid a total of only \$162,656.72, so the first year's payment was half what the minimum fee would have been. I don't know how much they've paid since then. "You should call Jody Kawada in the mayor's press office," Park District spokesperson Michelle Jones told me. "We were instructed to refer all questions about that particular vendor to the mayor's press office." Kawada said she didn't know how much the Park Grill paid but promised to get back to me. (She didn't.) City officials I've talked to say that when you subtract all the things the Park District's paying for, it's probably losing money on the Park Grill.

The contract became a major political embarrassment for Mayor Daley last February, when the *Sun-Times* revealed that O'Malley had had a baby with Laura Foxgrover, the Park District official whose department oversaw the bidding process for the restaurant in Millennium Park, and that the Park Grill's roster of investors included friends and associates of the mayor's. The paper also pointed out that the Park Grill wasn't paying any property taxes.

When the story broke, Daley defended the contract, arguing that the city had gotten the best deal it could given that it was taking bids right after 9/11, but within a few days he and other administration officials were backtracking. He told reporters that the Park District had been too eager to get a restaurant up and running, and through his aides he demanded that the Park Grill negotiate a new deal.



Park Grill

Soon afterward the city was negotiating with Horan and O'Malley.

The brouhaha apparently caught the attention of Cook County assessor James Houlihan. On March 16 his office sent Horan and O'Malley a letter notifying them that their restaurant was being assessed at \$502,550 and that they would be sent a bill in the fall for their 2004 property taxes.

On August 5 Horan and O'Malley filed suit against the assessor, asking that a judge prohibit the county from imposing taxes on the restaurant.

According to Stephen Novack, the lawyer who filed the suit, other vendors who have some form of property on Park District land aren't paying property taxes. But the heart of his argument is that the county doesn't have the right to impose a tax on the Park Grill because its contract with the Park District isn't a lease. "The law allows the county to impose property taxes on businesses on tax-exempt property—provided they have leases," he says. "But my client does not have a lease." He says the Park Grill simply has a license or concession

agreement. "There's a difference between a lease and a license or concession agreement. The difference is that of control. In a normal lease a landlord does not exert the kind of control that the Park District has here in terms of prices they charge or how long they stay open." He points out that the Park Grill's contract never uses the term *lease* and doesn't refer to the parties as *lessor* or *lessee*.

John Gorman, a spokesman for the state's attorney's office, which is defending the assessor in the case, says the contract is a lease, even if it doesn't specifi-

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cally call itself a lease. "We have not yet filed our response to their suit," he says, "but our position is that the Park Grill is a leaseholder and as a leaseholder they are subject to taxes." I asked Novack why the county went after the Park Grill. He thinks it was because the media pointed out that the restaurant wasn't paying any property taxes. "The county did not want to be accused of ignoring its obligation to collect taxes," he says.

Other City Hall observers suspect that Houlihan was playing hardball on Daley's behalf, putting pressure on the Park Grill as a way to force it to renegotiate its contract with the Park District. (A publicist for the city says the two sides are still negotiating.) But Andrea Raila, who runs a property tax appeal service, agrees with Novack: she thinks Houlihan was acting on his own. "They have staffers who scour the papers looking for property

like this that's not being taxed," she says. "They probably sent them a notice soon after they read about it in the press." Raila says the county has the right to tax property even if it's on tax-exempt land, pointing to a hot dog vendor in a CTA space who had to pay. "It doesn't matter who owns the land—the city, the county, the CTA, the Park District," she says. "The land may be tax-exempt, but the building's not."

By her calculation the Park Grill will get hit with a \$30,000 tax bill sometime in the next few weeks. "And it will probably go up next year, because this is prime real estate," she says. "If I were them, I'd start preparing a tax appeal now, 'cause that lawsuit over the lease could drag on for years." Some Park District concessionaires worry that the county will now go after them. "Everyone's watching this—once

they start imposing property taxes, where do they stop?" says one. "It's not that I'm crying for the Park Grill. But a deal's a deal. If the city didn't like the bids that came in for the restaurant they should have rebid them. They were in such a rush to get Millennium Park going they signed a deal they regret. This is the fallout to a contract they probably shouldn't have signed in the first place." ■



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