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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY
DOCKET NO. 000160-2019

CITY OF PLAINFIELD,	:
	:
Plaintiff,	:
	:
v.	:
	:
BOROUGH OF MIDDLESEX,	:
	:
Defendant.	:
	:

Approved for Publication
In the New Jersey
Tax Court Reports

Decided: December 24, 2019

John S. Wisniewski for plaintiff
(Wisniewski & Associates, L.L.P., attorneys).

Michael P. O'Grodnick for defendant
(Savo, Schalk, Gillespie, O'Grodnick & Fisher, P.A., attorneys).

SUNDAR, J.T.C.

This is the court's decision regarding plaintiff's summary judgment motion which seeks an order that real property, owned by plaintiff and located in defendant taxing district, is exempt from local property tax under N.J.S.A. 54:4-3.3. Plaintiff, also a taxing district, contends that an exemption is warranted because its property is government-owned and is used for public purposes. Defendant argues that the entire property is taxable because precedent bars apportionment of the tax exemption where only a portion of property is used for public purposes, and here, only a portion of plaintiff's property is used for public purposes with the remainder lying vacant. Defendant further contends that summary judgment is inappropriate since facts are needed to establish the extent of the property being used for public purposes and the extent not so used.

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For the reasons that follow, the court finds that plaintiff's property is entitled to a tax exemption because it is undisputedly used for public purposes under the plain language of the public use exemption statute, N.J.S.A. 54:4-3.3. The apportionment precedent applies only to government-owned property that is partially used for private purposes, and the court will not extend this analogy to government-owned property partially used by another government entity. Under the general principles that N.J.S.A. 54:4-3.3 must be liberally construed, plaintiff's property is entitled to the public use exemption.

PROCEDURAL HISTORY

Plaintiff, City of Plainfield ("City") originally filed a complaint with an Order to Show Cause in the Superior Court seeking, among others, an order declaring that property identified as Block 53, Lot 4 ("Subject"), owned by the City and located in defendant, Borough of Middlesex ("Borough"), is tax-exempt pursuant to N.J.S.A. 54:4-3.3, and temporarily restraining the Borough from selling a tax sale certificate for the Subject. By consent order dated December 7, 2018, the Superior Court transferred the matter to this court to determine whether the Subject is tax-exempt. The consent order also included the Borough's concession that it had failed to notify the City of the change in assessment for the Subject for tax year ("TY") 2018. The City also withdrew its Order to Show Cause "for adjudication of the issue of whether the subject property is tax exempt before the Trenton [T]ax Court." The City's instant summary judgment motion followed.

FACTS

The following are the undisputed facts. The Subject is a lot measuring about 3.2 acres. It is a landlocked parcel, located in the Borough but owned by the City. It is adjacent to Mountainview Park, a public park owned by, and located in, the Borough, and it borders the Green Brook River to the other side. Historically, the Subject was used by the parties for purposes of

sewage disposal under joint meetings of the respective authorities of the City and the Borough. As part of this joint operation, a building was constructed on the Subject. The joint sewage operations have since ceased.[1]

The Subject has been historically tax-exempt.[2] According to the parties, the building on the Subject is not currently used. The computer excerpt of the Subject's assessment history has a hand-written note signed by the assessor as follows: "inspected in 2016 and removed improvement value of $63,800. Collapsed/dilapidated structure." It also shows that for TY 2016, the Subject was assessed at $159,800 (allocated $96,000 to land and $63,800 to improvements) and classified

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[1] The history of the Subject's use for sewage disposal treatment is set forth in a litigation between the same parties and two other plaintiff taxing districts on the issue of the validity of a zoning ordinance passed by the Borough impacting the use of plaintiffs' land. See City of Plainfield v. Borough of Middlesex, 69 N.J. Super. 136 (Law. Div. 1961). The City and the other two taxing districts acquired 91 acres of land in the Borough in 1914 and constructed a sewage disposal plant for their use. Id. at 137. In 1954, they contracted "in joint meeting," with the County's Sewerage Authority to dump sewage being treated in the plant into the "trunk sewer" being constructed by that Authority. Ibid. In 1958, after the "necessary connections were made between the sewage systems of the joint meeting and that of the . . . Authority . . . the sewage plant . . . was no longer necessary . . . and was dismantled." Ibid. However, other facilities such as "a two-story office and laboratory building, garage, machine shop, a maintenance building and a residence for the superintendent, remain[ed] necessary for the continued operation of the joint meeting's sewage system as so connected with the Middlesex County Sewerage system." Ibid.

Neither party provided information as to the above facilities. However, it appears that some or all of the facilities were in existence in 2000. This is evidenced by the Borough's exhibits: a construction permit dated October 2000 and a certificate of approval dated November 8, 2000, both issued by the Borough to the City for electrical work (60 Amp Service) on the Subject ("work site location" being shown as Mountainview Park) at an estimated cost of $5,000. All fees were "waived" per the permit.

[2] See Borough of Middlesex v. Inhabitants of City of Plainfield, 92 N.J.L. 520 (1918) (reversing the county board judgments that limited tax exemption for TYs 1915 and 1916 on the 91 acres acquired by the City and two other tax districts, see supra n.1, to only the buildings and land actually used for the filtering bed). The Court disagreed with the Borough that because the entire tract was used for public purposes, and the use was limited to the three plaintiff taxing districts, the TYs 1915 and 1916 assessments were proper. Id. at 523. Rather, the Court ruled, the purchase was made under a general law that applied "to all municipalities, and when it is invoked by a municipality or municipalities, it is done in furtherance of a public use." Ibid.

as 15C (public property, which is defined as "real property owned by," among others, "local governments . . . and devoted to public uses"). See N.J.A.C. 18:12-2.2(n). For TYs 2017 onwards, the Subject was classified as Class 1 (vacant land, see N.J.A.C. 18:12-2.2(a)) and assessed at $96,000 allocated entirely to land. However, it is undisputed that the sewer line continues to run through the Subject, and a monitoring station for said line continues to operate on the Subject. A building on the adjacent land belonging to the Borough was apparently used in connection with the joint sewage operations but is now used by the Borough's Department of Public Works as a garage.

The Borough uses a cleared portion on the Subject to store its construction vehicles, equipment, and materials, such as a backhoe, a steamroller, a large storage container, trailers, metal barrels/containers, traffic cones, and mulch. These vehicles, equipment, and materials are used by the Borough's Department of Public Works. This portion of the Subject is cordoned off with a chain-link fence, such fence also lying on the Subject.

Further, a part of a path looping around Mountainview Park passes through the Subject. The public uses this path for access to the Park, as a trail, and for recreational purposes.

The Borough and the public use the Subject and the path without any formal agreement of a lease, license, or easement. Except for the areas of the Subject used for storage, the sewer monitoring station, and the public access path, the Subject is unimproved and in its natural state as heavily wooded land, and lies along the riverbed in a flood zone.

Per the City's Finance Director's certification, the City and the Borough had been negotiating a sale of the Subject. Sale negotiations are also evidenced by the Borough's letter of September 7, 2004, to the City's Director of Public Works, wherein the Borough offered to pay "up to $25,000" for the Subject, which was described as "landlocked and located in Mountain

View Park, the Borough's largest open space dedicated to recreation." The City apparently sought $120,000, which, per the City's Finance Director, was the Subject's assessment. Negotiations broke down, after which, sometime in late November 2018, the City became aware that the Borough had placed the Subject on the tax sale certificate list for $10,018.04 in delinquent property taxes, constituting principal and interest for TY 2017, and interest for TY 2018. Up to that point, the City was not on notice that the Subject's tax exemption had been revoked. Neither party provided the court with any written justification from the Borough's assessor for removal of the Subject's tax exemption. The Borough issued a tax sale notice dated November 13, 2018, for $10,628.53 (constituting $8,298.24 in principal and $2,330.29 in interest). After the City became aware of the proposed tax sale, it filed a complaint on November 28, 2018.

ANALYSIS

A. Appropriateness of Summary Judgment

Summary judgment will be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). Here, the sole issue is whether the Subject is tax-exempt under N.J.S.A. 54:4-3.3. The material facts for resolution of this issue are undisputed: the parties agree that the Subject is government-owned and that a portion of the same is used for public purposes. The only issue is whether the Subject should be deemed taxable because the remaining portion is in its natural state as wooded and unimproved and is not being used for any specifically identified purpose. Therefore, summary judgment as a method of disposition is appropriate.

B. Appropriateness of Granting Tax Exemption

N.J.S.A. 54:4-3.3 provides that "the property of the . . . respective counties and municipalities . . . used for public purposes . . . shall be exempt from" local property taxation. The exemption applies to property "whether located within or without the municipality." Township of Hanover v. Town of Morristown, 4 N.J. Super. 22, 24 (App. Div. 1949). In applying this statute, it must be noted that "exemptions in favor of governmental agencies should be liberally construed." Walter Reade, Inc. v. Township of Dennis, 36 N.J. 435, 440 (1962) (internal citation omitted).

It is undisputed that the City owns the Subject. The only issue is whether the phrase "used for public purposes" means the entire property or portions of the same. The plain language of the statute, N.J.S.A. 54:4-3.3, does not assist this inquiry.

In County of Bergen v. Borough of Paramus, 79 N.J. 302, 306 (1979), our Supreme Court observed that the phrase "'used for public purposes' clearly contemplates that something more than ownership must be established. The word 'used' connotes employment or application to an end." The Court supported this ruling by comparing the statute's grant of exemption to property acquired by a governmental entity through foreclosure "if not used for private purposes." Ibid. (quoting N.J.S.A 54:4-3.3). The Court noted that "since after acquisition municipalities in general simply hold title to the land," the foreclosed property "which was not used for a public purpose," would not have been tax-exempt but for the express inclusion in the statute. Ibid. "This confirms that [N.J.SA. 54:4-3.3] requires the property to be devoted to some public purpose." Ibid.

"The concept of public purpose is a broad one . . . [and] connotes an activity which serves as a benefit to the community as a whole, and which, at the same time is directly related to the functions of government." Roe v. Kervick, 42 N.J. 191, 207 (1964). However, courts should not

be rigid in interpreting "public purpose" or public use, and this phrase "cannot be static in its implications." Ibid. Rather, "[t]o be serviceable it must expand when necessary to encompass changing public needs of a modern dynamic society. Thus it is incapable of exact or perduring definition." Ibid. When this "test is to be applied," the court's determination should be made "with reference to the object sought to be accomplished and to the degree and manner in which the object affects the public welfare." Ibid.; see also Township of Hanover, 4 N.J. Super. at 24 ("the phrase 'used for public purposes' should be liberally construed" in favor of the government in contrast to tax exemptions afforded to private entities because "political bodies . . . are not taxed in a doubtful case"). Thus, storage of county personal property is a public use. See City of Hackensack v. County of Bergen, 405 N.J. Super. 235 (App. Div. 2009).

Here, the Borough concedes that its storage of property on a portion of the Subject is a public use, as is the public use of the path as an access or pedestrian walkway on the portion adjacent to Mountainview Park. Such uses both benefit the community and are directly related to the Borough's governmental functions of providing and operating (i) its Public Works Department and (ii) a public park. The Borough's argument that the portion of the Subject containing the sewer line and sewer monitoring equipment is not a public use is unfounded since N.J.S.A. 54:4-3.3 does not carve out property used for sewer disposal purposes from tax exemption. The sewer line and monitoring station therefore also satisfy the Subject's use for public purposes.

Except for the portions of the Subject used for these three identified public purposes, the remainder of the Subject lies in its natural state as heavily wooded land. The City, relying on Borough of Middlesex, 92 N.J.L. 520, claims that this remainder is still devoted to public use since it serves as a buffer between Mountainview Park and the open-air storage area on the Subject.

It is reasonable to assume that, for security, safety, and aesthetic purposes, the Borough would not want the construction vehicles and equipment visible from the public park. The Google-powered aerial map provided by the City shows the demarcated Subject as being heavily wooded and amidst other wooded areas owned by the Borough. However, it is difficult to accept this map as concrete evidence that the wooded portion of the Subject serves as a buffer, especially since all inferences must be drawn in favor of the non-movant on a motion for summary judgment. Indeed, even in Borough of Middlesex, the determination that an area served as a "buffer" was based on evidence. Id. at 523.[3] See also County of Bergen, 79 N.J. at 310 ("Land may properly serve as a buffer zone . . . [and] [i]f so . . . may perhaps be deemed to be used for a purpose associated with the use of the adjacent property"; however, there must be a "record" as to "the nature, extent, location and other relevant factors in this respect," with the claimant bearing the burden of proof).

The Borough argues that the Subject is not entitled to an exemption even if a portion is undisputedly held for public purposes because apportionment of a tax exemption is impermissible under County of Essex v. City of East Orange, 214 N.J. Super. 568 (App. Div. 1987). In that case, the court reversed the trial court's grant of exemption, which was based on precedent requiring liberal construction of the public use exemption. Rather, the higher court agreed with the defendant that under N.J.S.A. 54:4-3.3, publicly owned property "should be totally exempt or totally taxed." Id. at 578. The court held that "there is no statutory basis for" apportioning a tax exemption where the property has a partial private use, even if such an "approach may be equitable." Id. at 577. It noted that although N.J.S.A. 54:4-3.3 does not explicitly require the

[3] The cited portion of the court opinion appears to be dicta. See 92 N.J. L. at 523 (the argument that the property was not for public use "is all that is urged by the [B]orough . . . but if it be necessary to go beyond this we are of opinion that the acquisition of this tract of land was necessary and reasonable for the public use intended").

public use to be exclusive, "[n]evertheless, it seems clear that the use must be exclusive for there to be an exemption as otherwise property not used for public purposes will be exempt, a result not allowable under N.J.S.A. 54:4-3.3." 214 N.J. Super. at 578 (citing Jamouneau v. Div. of Tax Appeals, 2 N.J. 325 (1949)).

In County of Essex, a portion of the government-owned property was leased to a private, for-profit entity. Here, this fact is not present. The Borough's argument that the public use of the Subject is "not exclusive" does not identify any private or for-profit use. Therefore, it is difficult to agree with the Borough that the analogy of apportionment applies to the facts here, where portions of the City's property are used solely for public purposes by the Borough and the public.[4] The Borough's concession that it is not arguing that "every inch" of the Subject must be devoted to public use does not persuade the court that the decision in County of Essex should extend to the facts here. The court therefore rejects the Borough's contention that summary judgment is inappropriate when the proportion of the Subject used for the above-described public purposes and the proportion retained in its natural, wooded state is unknown. These measurements are not material facts, even if in genuine dispute, to bar relief by way of summary judgment.

Further, that the heavily wooded portion of the Subject is retained in its natural state does not automatically mean that the Subject should be denied an exemption on grounds that this portion is idle or unused. The situation here is unlike in those cases that held unimproved land owned by a public entity is taxable if it is not being used. For instance, in N.J. Tpk. Auth. v. Township of

[4] The Borough's reliance on the unpublished Tax Court opinion, Seaboard Landing, LLC v. Borough of Penns Grove, 2014 N.J. Tax Unpub. LEXIS 73 (Tax Dec. 2, 2014), is similarly misplaced. While R. 1:36-3 bars citation to or reliance upon unpublished opinions, the court notes that tax exemption was denied due to public-private use of government property, and plaintiff property owner seeking the public use exemption was a private entity.

Washington, 16 N.J. 38, 44 (1954), the Court held that vacant land "not now in the public use or presently intended for public use is taxable even when owned by" the Turnpike Authority, which public agency's property when used for its statutory purposes is entitled to a tax exemption. However, the lands in question had no "interchanges, service or maintenance areas or other installations of the Turnpike Authority," which had also conceded that the lands would not be developed but would be disposed of as surplus lands. Id. at 41-42. Here, the City's sewer line and monitoring station are on the Subject. The Borough also concedes that the City has not "abandoned" the Subject.

In County of Bergen, our Court held that N.J.S.A. 54:4-3.3 "requires the property to be devoted to some public purpose." 79 N.J. at 306. This is undoubtedly and undisputedly occurring here. The above-identified and conceded public or governmental uses of the Subject benefit the Borough, its residents, and the general public. The uses are certainly intensive. The access pathway loops around Mountainview Park and is used by the public in conjunction with the park use. The photographs also show a significant amount of large equipment of the Borough stored or placed on the Subject. Based on these undisputed facts, it would be a strained interpretation of N.J.S.A. 54:4-3.3 to deny an exemption where there is public, and only public, use of the government-owned property. Cf. Borough of Middlesex, 92 N.J.L. at 523 ("The actual occupation of a portion of the land by the disposal works is not the measure of public use. . . . The extent and character of different cases must depend upon existing conditions.").

The court is therefore guided by the general principles in the application of the public use exemption statute, which is that exemptions in favor of governmental entities should be liberally construed. The undisputed facts are that the Subject is being actually and exclusively used for

several public purposes. The extent of the area being used for public purposes is immaterial since it does nothing to change the conclusion here. Therefore, the Subject merits tax exemption.[5]

The matter was sent to this court to determine whether the Subject is tax-exempt. The City's challenge was to the tax sale certificate, which was issued due to the non-payment of the local property taxes and interest for TY 2017 and interest for TY 2018. It is undisputed that the City never received the tax delinquency notices, nor notice from the Borough's assessor that Subject's tax exemption was being revoked. The consent order of the Superior Court also notes the Borough's concession that it had failed to notify the City of the change in the Subject's assessment for TY 2018. Precedent is clear that the appeal deadlines in the taxing statute, N.J.S.A. 54:3-21, although strictly construed, have been extended for lack of notice on due process grounds. See Centorino v. Township of Tewksbury, 18 N.J. Tax 303 (Tax 1999); City of East Orange v. Township of Livingston, 27 N.J. Tax 161 (Tax 2013). Therefore, this court is not jurisdictionally barred from deciding that the Subject should be tax-exempt for TYs 2017 and 2018.

[5] In County of Bergen, the properties in question were county-owned vacant lots, separate from a government-run hospital, as to which counsel represented, there were "no plans 'to do anything,'" but the lots "had a potential public use" sometime in the future. 79 N.J. at 304-05. The Appellate Court remanded the matter for a plenary hearing because (a) there were no facts as to when this potential public use would happen and the lower court had erroneously interpreted precedent that had used the phrase "potential public use" to mean an indefinite time whereas that phrase was interpreted to mean property that was "'idle, and awaiting application to public purposes' within a definitive period;" and (b) since the County had, in earlier litigation, been denied a rebate under N.J.S.A. 54:4-5 on grounds of non-use of property, it was unknown whether the lots at issue were the "identical unoccupied lands referred to in" the earlier litigation, and "[t]he record [wa]s barren on whether the condition of the land has remained the same throughout these years." Id. at 308-09. None of these concerns are implicated here, since the Subject has been historically tax-exempt; prior litigation on tax assessments only affirmed that all land was tax-exempt; and this court has found that the current use is also a public use.

CONCLUSION

For all the above reasons, the court grants the City's motion for summary judgment. An Order and Final Judgment in this regard will accompany this opinion.