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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

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Re: White Oaks Country Club, Inc. and
Department of Environmental Protection v.
Township of Franklin
Docket No. 007436-2012

Dear Counsel:

This letter constitutes the court's opinion with respect to the parties' motions for summary judgment. At issue is whether real property owned by the Department of Environmental Protection ("DEP") on which a for-profit entity operates a golf course and related amenities is exempt from

local property taxes for tax year 2012. For the reasons stated more fully below, the court concludes that the statutory requirements for an exemption set forth in N.J.S.A. 54:4-3.3 were satisfied for the subject property for tax year 2012. Consequently, the taxpayer's motion for summary judgment is granted, and the municipality's cross-motion for summary judgment is denied. The court will enter Judgment granting an exemption for the subject property for tax year 2012.

I. Findings of Fact and Procedural History

The following findings of fact are based on the submissions of the parties with respect to their motions for summary judgment.

The property at issue is designated as Block 6401, Lot 23 in the records of Franklin Township, Gloucester County. The 237-acre parcel is commonly known as 2951/3067 Dutch Mill Road. A portion of the property is improved with a golf course, clubhouse/restaurant, parking area, and related amenities, including a pro shop. The remainder of the property is vacant land.

The DEP, a department of State government, purchased the subject property from plaintiff White Oaks Country Club, Inc. ("White Oaks") through a purchase agreement dated October 3, 2006. At the time of the purchase White Oaks operated a for-profit golf course and restaurant on the parcel. The department made the purchase through its Office of Green Acres as part of its Pinelands Project, a program for the acquisition of multiple parcels in the Pinelands region for recreation and conservation purposes. DEP purchased the subject property, which is adjacent DEP's White Oak Branch Wildlife Management Area, to ensure that it would not be developed. The purchase was made pursuant to the Garden State Preservation Trust Act, N.J.S.A. 13:8C-1 to -20, with funds from the Garden State Preservation Trust. DEP assigned the subject property to the Division of Fish and Wildlife on October 14, 2009 for administration.

The purchase agreement provided that White Oaks would temporarily continue to operate the golf course, clubhouse/restaurant, and related amenities, subject to, and for the duration of, a management agreement, which was for a term of five years. This arrangement provided DEP with time to find a long-term solution for "continued maintenance of the site improvements and possible operation of a golf course, clubhouse/restaurant operation" at the subject property.

The management agreement limited plaintiff's use of the subject property to the golf course and clubhouse/restaurant area and prohibited White Oaks from using the subject property "for any purpose other than the operation of White Oaks Golf Course." Notably, the management agreement required DEP to approve all fees for public admission, greens fees, membership fees, or any other charges associated with the use of the subject property.

According to the management agreement, White Oaks was responsible for "all taxes and assessments, together with interest and penalties thereon, which are levied upon or assessed with respect to" the subject property. The purchase agreement provided that DEP would notify Franklin Township of its purchase of the property and that "future real estate taxes as to the [property] if any, are to be paid by" White Oaks under the management agreement.

From 2006 to 2011, while plaintiff operated the golf course, clubhouse/restaurant, and related amenities under the original five-year management agreement, the subject property was treated as non-exempt. Plaintiff paid the taxes due on the subject property for those years.

Because DEP does not have the expertise or staff resources necessary to operate a golf course, the Division of Fish and Wildlife issued a Request for Proposals ("RFP") to operate the golf course at the subject property after expiration of the management agreement. An initial RFP was released on August 3, 2011. A revised RFP followed on August 30, 2011. The purpose of the revised RFP was to "solicit proposals from qualified bidders to operate, maintain, and manage

White Oaks Golf Club . . . consistent with the operation of a public golf facility and restaurant/bar" that "shall be open for business to enhance and complement daily operation" of the golf course. Accordingly, the revised RFP provides that all proposals must be based on fees and prices that are subject to approval by DEP and that are comparable to those charged by other public golf courses and related restaurants in the area of the subject property. DEP must also approve all reservation systems, tournament procedures, and prices for all food, banquet/catering events, and alcoholic and non-alcoholic beverages" sold at the subject property.

White Oaks submitted the successful bid in response to the revised RFP. On March 1, 2012, DEP entered into a five-year operating agreement with White Oaks relative to the subject property. The operating agreement requires White Oaks to pay to DEP a yearly base payment in monthly installments, plus fifteen percent of annual gross revenue beyond predetermined thresholds, paid annually. In exchange, White Oaks is allowed to operate the golf course, clubhouse/restaurant, and related amenities portion of the subject property consistent with the revised RFP and its stated purpose and for no other purpose without the written consent of the DEP. The operating agreement also provides that White Oaks must operate the golf course and clubhouse/restaurant "consistent with the operation of a public golf facility and restaurant/bar," and that the restaurant "shall be open for business to enhance and complement daily operation" of the golf course. The RFP's requirement that DEP must approve all fees and prices at the subject property is incorporated into the operating agreement.

Revenue generated from the operating agreement is allocated to the annual operations of the Division of Fish and Wildlife. White Oaks is responsible for any local property taxes that may be assessed on the subject property "by any governmental body by reason of [plaintiff's] operation of" the golf course, clubhouse/restaurant, and related amenities. The DEP views the subject

property's adjacency to the White Oak Branch Wildlife Management Area as ideal for the maintenance of public recreation in an open space setting and intends to continue the operation of golf club as a public recreation facility as long as the operation is successful or until the subject property is needed for another purpose. However, White Oaks must abandon use of the subject property should DEP need all or part of the subject property for use for any public purpose.

The Franklin Township tax assessor considered the subject property to be non-exempt for tax year 2012 and placed an assessment on the parcel of $1,195,900.

On March 29, 2012, plaintiff filed a Complaint challenging the assessor's exemption determination. Plaintiff alleges that as State-owned property, the parcel is exempt from local property taxes pursuant to N.J.S.A. 54:4-3.3. Plaintiff also alleges that its operation of the golf course, clubhouse/restaurant, and related amenities does not negate the exemption, given that plaintiff's use of the property furthers the DEP's statutory mission to provide the public with opportunities for recreational activities. The Complaint does not include the DEP as a party.

The parties' initial motions for summary judgment were denied in a bench opinion in which the court identified disputed issues of material fact precluding relief. In addition, the court concluded that it was necessary to determine whether the DEP should be joined in this matter as a necessary party pursuant to R. 4:28-1.

On April 21, 2016, plaintiff renewed its motion for summary judgment in its favor.

On May 17, 2016, defendant renewed its cross-motion for summary judgment in its favor.

On August 6, 2016, the court, with the consent of the DEP, entered an Order joining the Department as a plaintiff in this action.

On September 30, 2016, the DEP submitted a brief with respect to the parties' summary judgment motions. The Department argued that the statutory requirements for an exemption

pursuant to N.J.S.A. 54:4-3.3 are satisfied for tax year 2012 because, among other reasons, plaintiff used the property in a manner that fulfills the DEP's statutory mission to provide opportunities for recreational activities to the public.

II. Conclusions of Law

Summary judgment should be granted where 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). In Brill v. Guardian Life Ins. Co. of Amer., 142 N.J. 520, 523 (1995), our Supreme Court established the standard for summary judgment as follows:

> [W]hen deciding a motion for summary judgment under Rule 4:46-2, the determination whether there exists a genuine issue with respect to a material fact challenged requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.

"The express import of the Brill decision was to 'encourage trial courts not to refrain from granting summary judgment when the proper circumstances present themselves.'" Township of Howell v. Monmouth County Bd. of Taxation, 18 N.J. Tax 149, 153 (Tax 1999)(quoting Brill, supra, 142 N.J. at 541).

The court concludes that the motion record contains sufficient undisputed material facts upon which to determine whether the subject property satisfied the statutory requirements for an exemption from local property taxes for tax year 2012. The ownership of the property by the DEP is not in dispute. The statutes concerning the DEP, its authority and responsibilities, and the entities that funded the purchase of the subject property have been identified and are readily

amenable to interpretation by the court. In addition, a copy of the operating agreement is in the motion record and its terms are plain. There is no dispute with respect to plaintiff's use of the subject property. The parties agree that plaintiff, a for-profit entity, operated a golf course, clubhouse/restaurant, and related amenities on the subject property in the year in question. This is a sufficient record on which to make a determination with respect to whether the parcel qualified for an exemption for tax year 2012 pursuant to N.J.S.A. 54:4-3.3.

Defendant argues that further discovery is needed from the DEP. According to defendant, DEP's assertion that plaintiff's use of the subject property satisfies the statutory requirements for an exemption is contrary to the provisions of the purchase agreement and operating agreement that require plaintiff to pay any taxes that might be assessed on the property. There is, however, no contradiction between the purchase agreement and the operating agreement, on the one hand, and the DEP's position before this court, on the other. The relevant contractual provisions make plaintiff liable for any taxes that might be assessed on the subject property. This is not an acknowledgment that the subject property is subject to local property taxes. Indeed, it is quite plain from DEP's submissions, including the certification of the Manager of its Office of Leases and Concessions, that the agency believes that plaintiff's use of the subject property furthers the Department's statutory authority to provide the public with opportunities for recreational activities. The parties merely agreed that in the event that taxes are assessed on the parcel for any reason, e.g., a change in the exemption statute, plaintiff's use of the property for a purpose not allowed by the operating agreement, an erroneous assessment of tax that is not challenged in a timely fashion, plaintiff would be responsible for any assessment. Discovery is not needed on this point.[1]

[1] The court notes that the municipality has had many opportunities to obtain discovery from the DEP. Defendant has been aware that the DEP is the owner of the property from at least the

Because they represent a departure from the fundamental approach that all property owners bear their fair share of the local property tax burden "[t]ax exemption statutes are strictly construed, and the burden of proving entitlement to an exemption is on the party seeking it." Abunda Life Church of Body, Mind & Spirit v. City of Asbury Park, 18 N.J. Tax 483, 485 (App. Div. 1999)(citing New Jersey Carpenters Apprentice Training and Educ. Fund v. Borough of Kenilworth, 147 N.J. 171, 177-78 (1996), cert. denied, 520 U.S. 1241, 117 S. Ct. 1845, 137 L. Ed. 2d 1048 (1997); Princeton Univ. Press v. Borough of Princeton, 35 N.J. 209, 214 (1961)). "'[A]ll doubts are resolved against those seeking the benefit of a statutory exemption . . . .'" Chester Borough v. World Challenge, Inc., 14 N.J. Tax 20, 27 (Tax 1994)(quoting Township of Teaneck v. Lutheran Bible Inst., 20 N.J. 86, 90 (1955)). These standards, however, do "not justify distorting the language or the legislative intent" of the exemption statute. Boys' Club of Clifton, Inc. v. Township of Jefferson, 72 N.J. 389, 398 (1977)(citation omitted). "[W]hile the construction of the applicable statute must be strict, it must also be reasonable." Phillipsburg Riverview Org., Inc. v. Town of Phillipsburg, 26 N.J. Tax 167, 175 (Tax 2011)(citing International School Serv., Inc. v. Township of West Windsor, 412 N.J. Super. 511, 524 (App. Div.), aff'd, 207 N.J. 3 (2011)), aff'd, 27 N.J. Tax 188 (App. Div.), certif. denied, 215 N.J. 486 (2013).

However, "tax immunities for government authorities should be liberally construed because they facilitate the provision of public services." Township of Holmdel v. New Jersey Highway Auth., 190 N.J. 74, 88 (2007)(citation omitted). "Even where government agencies lease

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time of the filing of the Complaint, which alleges that the property is exempt from local property taxes because it is owned by the State. In addition, plaintiff's initial moving papers provide details of the DEP's purchase of the property in 2006. No bar existed to the municipality seeking discovery from DEP prior to the date on which the court entered an Order joining the agency as a plaintiff in this matter.

property to private entities, exemptions should be liberally construed because they ultimately favor private-sector activities that the state considers to be valuable." Ibid.

N.J.S.A. 54:4-3.3 provides, in relevant part, "the property of the State of New Jersey . . . used for public purposes . . . shall be exempt from taxation . . . ." There is no dispute that the subject property is owned by the DEP, a department of the State. Ownership alone, however, is not sufficient to satisfy the statute. It is the public property's use that controls. New Jersey Turnpike Auth. v. Township of Washington, 16 N.J. 38 (1954).

Here, the municipality contends that plaintiff's use of the subject property to operate a golf course, clubhouse/restaurant, and related amenities negates the claimed exemption. The court concludes otherwise.

Two statutes and a number of judicial decisions interpreting those statutes provide the foundation for the court's analysis. The court begins with the Leasehold Taxing Act. That statute provides in relevant part:

> When real estate exempt from taxation is leased to another whose property is not exempt, and the leasing of which does not make the real estate taxable, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof, or his assignee, and assessed as real estate.
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> [N.J.S.A. 54:4-2.3.]

Evidence in the motion record plainly establishes that the DEP does not lease the subject property to plaintiff. The golf course, clubhouse/restaurant, and related amenities are operated pursuant to an operating agreement, not a lease. N.J.S.A. 54:4-1.10 provides that the absence of lease will not, standing only, preclude taxation of real property owned by a State entity but used for private, for-profit purposes. That statute provides in relevant part that

> [w]hen real property which is exempt from taxation is used by a private party in connection with an activity conducted for profit, and

> the use does not render the real property taxable pursuant to [N.J.S.A. 54:4-2.3], the real property shall be assessed and taxed as real property of the private party.
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> [N.J.S.A. 54:4-1.10.]

N.J.S.A. 54:4-2.3 and N.J.S.A. 54:4-1.10 have been interpreted by our Supreme Court as applying only where a private use of State-owned property does not further the public purpose of the entity that owns the property. In Todd Shipyards Corp. v. Township of Weehawken, 45 N.J. 336 (1965), the Court set forth the analysis that has long been applied to determine if a private use of real property owned by the State removed the otherwise applicable exemption from local property taxes. There, a private entity leased publicly owned land for shipyard operations that were "concededly private; government work [was] only a minor part of total work done" on the property. Id. at 339. Assessments were made on the property under the Leasehold Taxing Act. Ibid.

As the Court explained, in its prior precedents interpreting the Act, the

> issue was whether the Legislature intended the exemption to depend upon whether the public body furnished the public service itself, or through a management contract, or through a lease. We held the Legislature intended the property to be exempt so long as it was devoted to the public use contemplated by the exempting statute, without regard to the relationship between the public body and the operator of the facility. In short, where the lease is the medium used to further the public purpose the Legislature assigned to the State's agency, the reason for the exemption continues. In other words . . . the Leasehold Taxing Act was intended to reach leases made for private purposes, rather than a lease made to effectuate the very public purpose committed to the agency.
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> [Id. 345-46.]

There, the Court determined that because the private shipyard operations on the property did not further the public purpose of the government entity that owned the property, an exemption did not apply.

More recently, the Court affirmed this interpretation of the law. In Holmdel, supra, 190 N.J. at 88-89, the Court held that

> private lease agreements do not automatically forfeit an agency's tax immunity. Rather, the determinative inquiry is whether the property is utilized in furtherance of the agency's statutory mandate. If a government property or facility is leased to a private entity and the private entity operates the property or facility in accordance with the agency's statutory purpose, the tax immunity may still apply.
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> [(citation omitted).]

In several instances, courts have found that an exemption applies to real property owned by a public entity but on which a private, for-profit enterprise operates in furtherance of the owner's authorized public purpose. For example, in Walter Reade, Inc. v. Township of Dennis, 36 N.J. 435 (1962), the Court examined the tax exempt status of several parcels of real property owned by the New Jersey Highway Authority, a State entity, along the Garden State Parkway. Through a license agreement with the public authority, a private entity operated for-profit restaurants on the subject properties as amenities at rest stops for the motoring public. The Court held that the private entity's use of properties did not preclude an exemption from local property taxes because the Authority had the statutory power to provide services areas, including restaurants, for the benefit of the travelling public. As the court explained "whether the Authority achieves the specific public purpose assigned to it by direct operation or through an authorized contractual arrangement with another" the exemption applies because the property was being used to further an authorized public purpose. Id. at 441.

Similarly, in Town of Bloomfield v. Division of Tax Appeals, 84 N.J. Super. 19, 21 (App. Div. 1964), the court found that real property owned by the New Jersey Highway Authority was exempt from local property taxes. There, a private entity, through a lease with the Authority, operated a restaurant and two parking areas along the Garden State Parkway. Thirty-five percent of the restaurant's business was derived from local, non-Parkway patrons, who could access the restaurant from a local road. The court reasoned that the restaurant was primarily used for the benefit of Parkway patrons – consistent with the statutory purposes of the Highway Authority – and that the "non-Parkway portion of the business, although concededly substantial, is nevertheless an incidental source of additional revenue to the licensee." Id. at 22.

In County of Bergen v. Borough of Leonia, 14 N.J. Tax 142 (Tax 1994), this court canceled an assessment on real property owned by the county, on which a private-entity lessee operated two horse riding academies. The court concluded that the private riding academies were "part of a large public recreation program and plan" consistent with the statutory authority of the county to operate a public park. Id. at 149.

Here, the State Park and Forestry Resources Act states that the "provision of recreational programs to all segments of the public enhances the public health, prosperity and general welfare and is a proper responsibility of the State." N.J.S.A. 13:1L-2. The DEP shall "[p]rovide recreational activities and programs within State parks and forests for the benefit of the State's citizens" and "[s]trive to provide recreational opportunities to all segments of the State's population . . . ." N.J.S.A. 13:1L-5(a) and (b). "State parks and forests" include "all Sate owned . . . lands, waters and facilities administered by the Department of Environmental Protection, including . . . recreational areas . . . but not including wildlife management areas or reservoir

lands." N.J.S.A. 13:1L-3. Recreational activities, as defined by the Legislature, "includes, but is not limited to . . . golf." Ibid.[2]

In addition, the Garden State Preservation Trust Act, N.J.S.A. 13:18C-1 to -57, under which the DEP obtained the funds to purchase the subject property, provides that "enhancing the quality of life of the citizens of New Jersey is a paramount policy of the State." N.J.S.A. 13:8C-2. One way to implement this policy is to provide "greater opportunities for recreation" to State residents. Ibid. Thus, "it is necessary and desirable to provide funding for the development of parks and other open space for recreation and conversation purposes." Ibid.

To effectuate this policy, the Legislature enacted the Garden State Preservation Trust, N.J.S.A. 13:8C-4, which biannually receives a list of projects that DEP recommends receive funding from the Garden State Green Acres Preservation Trust Fund for acquisition and/or development of lands for recreation and conservation purposes. N.J.S.A. 13:8C-23a; see also N.J.S.A. 13:8C-19 (directing the State Treasurer to establish such a Trust Fund). The Trust may delete, but not add, items to the DEP project list. It thereafter submits to the Governor and the Legislature proposed legislation appropriating money from the Trust Fund and other sources to fund projects on DEP's list. N.J.S.A. 13:8C-23a. Moneys appropriated to DEP from the Trust Fund must be used to acquire and/or develop lands for "recreation and conservation purposes." N.J.S.A. 13:8C-26a.

The Garden State Preservation Trust Act defines "[r]ecreation and conservation purposes" as including "active sports" and "similar use for . . . public outdoor recreation . . . ." N.J.S.A.

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[2] The DEP used to operate golf courses itself and promulgated regulations for its golf courses. The Department has delegated all of its golf course operations to contractors and repealed the regulations. See 46 N.J.R. 335 (b); 44 N.J.R. 1936 (a), 1937.

13:8C-3. This clearly includes golf. By contrast, the Green Acres, Farmland and Historic Preservation, and Blue Acres Bond Act of 1995, L. 1995, c. 204, §5d, expressly states that money allocated for the development of Liberty State Park for recreation and conservation purposes cannot be used to construct a golf course at that park. That the Legislature precluded use of Green Acres funds to construct a golf course at Liberty State Park indicates that use of Green Acres funds to provide access to golfing elsewhere is permissible. It would be superfluous to exclude use of Green Acre funds to construct a golf course at Liberty State Park if use of those fund for that purpose were not otherwise authorized. See Gabin v. Skyline Cabana Club, 54 N.J. 550, 555 (1969)("It is a cardinal rule of statutory construction that full effect should be given, if possible, to every word of a statute. We cannot assume that the Legislature used meaningless language.").

Furthermore, the legislative history for the Green Acres Land Acquisition Act of 1971, N.J.S.A. 13:8A-19 to -34, includes a 1968 "New Jersey Open Space Policy Plan" developed by the Department of Community Affairs. That plan refers to golf as an "active" form of recreation and includes an Appendix noting that golf courses are among the "facilities and features which are a necessary part of open space and recreation planning . . . ." The report indicates that private golf course are "vulnerable to development pressure" and "can be considered likely candidates for inclusion in future open space schemes." The plan concludes that "[m]eans must now be sought to preserve the existing courses and to establish new courses."

The subject property was purchased by the DEP with money from the Garden State Green Acres Preservation Trust Fund. The Legislature appropriated the money for the acquisition pursuant to L. 2006, c. 80, as part of the Green Acres Pinelands project. There is no doubt in the court's mind that the operation of a golf course on the subject property is a statutorily authorized public use of the property. The fact that the golf course includes a clubhouse/restaurant, pro shop,

and other amenities does not detract from this conclusion. To the contrary, it is reasonably necessary for a successful golf course to have facilities for the convenience of golfers, including restrooms, locker rooms, areas to socialize, opportunities for food and refreshments, and a retail location for the purchase of equipment and other items associated with golfing. Were the DEP to operate the golf course with public employees those same amenities would be expected by those using the facility.

The municipality's reliance on the holdings in The Presbyterian Homes of the Synod of New Jersey v. Division of Tax Appeals, 55 N.J. 275 (1970) and Renaissance Plaza Assocs., LP v. City of Atlantic City, 18 N.J. Tax 342 (Tax 1998), is misplaced. Presbyterian Homes, supra, concerned the exemption in N.J.S.A. 54:4-3.6 for real property used for charitable purposes. The property in question was used by the taxpayer for the operation of retirement facilities for which the taxpayer charged significant fees. 55 N.J. at 280. At the time of the decision, the exemption applied to property "'actually and exclusively used in the work of associations and corporations organized exclusively for the moral and mental improvement of men, women and children, or for religious, charitable or hospital purposes.'" 55 N.J. at 283 (quoting N.J.S.A. 54:4-3.6, since revised to remove exclusive use requirement). The Court determined that the use of the property was not "charitable" and did not, therefore, qualify for an exemption. In reaching its holding, the Court relied on several factors, including that the taxpayer's articles of incorporation did not require that it provide services for patients who became unable to pay for their care, that the taxpayer reserved the right to evict patients who did not pay, and that charging rent at the facility, apart from any charges for medical care, was not a charitable use. Id. at 286-87.

The exemption at issue here is established in N.J.S.A. 54:4-3.3, and does not require charitable use of the subject property. It is, instead, a public use, consistent with the statutory

mandate of the agency that owns the property, that determines whether an exemption applies. The fact that plaintiff does not engage in charitable activity – indeed, there is no dispute that plaintiff is a for-profit business enterprise – does not defeat the exemption in this case. Plaintiff's use of the property furthers the public purpose of the DEP by providing recreational opportunities to the public on land purchased with Green Acres funds. This is a crucial distinction from the facts before the Court in Presbyterian Homes.

Renaissance Plaza, on the other and, concerned a statute providing an exemption for real property of the Casino Reinvestment Development Authority ("CRDA"), which the statute "declared to be public property devoted to an essential public and governmental function and purpose . . . ." 18 N.J. Tax at 347 (quoting N.J.S.A. 5:12-167). The agency obtained real property through its power of eminent domain to allow for the property's development by a private party into a shopping center. 18 N.J. Tax at 344. After completion of the acquisition, the agency leased the property to the private developer under a ninety-nine year ground lease. Id. at 344-45. The lease included an option to purchase the property after the first twenty years of the lease. Id. at 345. This court resolved the question of whether the property satisfied the statutory exemption with a succinct analysis:

> Thus, unless the subject property is "property of" the CRDA for purposes of N.J.S.A. 5:12-167, or, unless some other exemption provision applies, the property is subject to local property taxation.
>
> In this case, although the CRDA leased the property to [the taxpayer], the lease is tantamount to a transfer of ownership of the property for local property tax purposes.
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> [Id. at 347.]

The Court also noted that CRDA's purpose is "to 'encourage investment in, or financing of,' projects which address the pressing social and economic needs of Atlantic City. N.J.S.A. 5:12-

160.j. The CRDA would be operating in a manner adverse to the economic needs of Atlantic City if it were to shield lessees from local property taxes." Id. at 350. This is not the case here, as it is undisputed that DEP owns the subject property. It is fulfilling its statutory mission to provide opportunities for recreational activities on the property through a contract with a private entity. The agency's purposes, and the benefit to the public, are not undermined by the tax exempt status of the property, which unquestionably would be exempt from local property taxes were the agency to elect to operate the golf course and related facilities with public employees.

In dictum, the court in Renaissance noted that were it to consider CRDA to be the owner of the property at issue, the exemption would not apply. In making this observation, the court noted that CRDA does not have the statutory authority to operate a shopping center, id. at 356, and that the "public purpose of the CRDA is accomplished once the project is operational." Id. at 358. Putting aside the limited precedential value of dictum, see Jamoneau v. Division of Tax Appeals, 2 N.J. 325, 332 (1949)(holding that dictum is a statement by a judge "not necessary to the decision then being made" and as such is "entitled to due consideration but does not invoke the principle of stare decisis."), it is clear that the court's observation in Renaissance Plaza is not applicable here. As noted above, there is ample statutory authority for the proposition that the DEP is authorized to provide for recreationally activities, including golf, on property that the agency owns. The Department submitted a certification of one of its officials establishing that the agency lacks the experience and resources necessary to operate a golf course on the subject property and has elected to provide this public benefit through its operating agreement with plaintiff.

Nor is the court persuaded by the municipality's argument that plaintiff forfeited its right to challenge the denial of an exemption for the subject property because it failed to include the DEP as a party in its initial pleading. There is no doubt that plaintiff should have brought this

action in the name of the DEP and served the Complaint on the agency at the time that it was filed. See R. 8:5-3(a)(8)("A plaintiff who is not the record owners of a property who files a complaint to contest a local property tax assessment . . . shall caption the complaint with the name of the record owner of the property, the name of the plaintiff, and the relationship of the plaintiff to the record owner of the property. In such cases, the plaintiff shall serve a copy of the complaint . . . on the record owner of the property."). However, the "court, on application or on its own motion, may permit the owner to intervene as a party plaintiff . . . or may take such action as it deems appropriate under the circumstances." Ibid. Here, at the time that plaintiff's Complaint was filed, the municipality and the public were put on notice of the block, lot, and address of the subject property and plaintiff's claim that the property was exempt from local property taxes for tax year 2012. This is sufficient notice to the taxing district allowing the subsequent addition of the owner of the property as a party. Prime Accounting Dept v. Township of Carney's Point, 212 N.J. 493 (2013).

Very truly yours,

/s/Hon. Patrick DeAlmeida, P.J.T.C.