**NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE TAX COURT COMMITTEE ON OPINIONS**

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| NJ DEP/UFT c/o CREAM RIDGE GOLF, LLC,<br><br>Plaintiff,<br><br>v.<br><br>TOWNSHIP OF UPPER FREEHOLD,<br><br>Defendant. | TAX COURT OF NEW JERSEY<br>DOCKET NO. 007457-2017<br><br>Approved for Publication<br>In the New Jersey<br>Tax Court Reports |

DECIDED: July 26, 2019

Katherine B. Galdieri for plaintiff Cream Ridge Golf, LLC (The Kelly Firm, PC, attorneys).

Jamie M. Zug for plaintiff NJ DEP/UFT (Gurbir S. Grewal, Attorney General of New Jersey, attorney).

Dennis Anthony Collins for defendant (Collins, Vella and Casello, LLC, attorneys).

GILMORE, J.T.C.

This opinion constitutes the court's decision on plaintiff's motion for summary judgment, seeking tax exempt status for a State owned golf course and restaurant, operated by for-profit entities. For the reasons stated more fully below, plaintiff's motion is hereby granted, and the property is deemed tax-exempt pursuant to N.J.S.A. 54:4-3.3, 2.3, and 1.10.[1]

[1] The court notes that a separate action was filed by the Township of Upper Freehold against the DEP (as such term is defined herein) before the Monmouth County Superior Court, under docket no. MON-L-002213-18, in which the Township of Upper Freehold seeks damages against the DEP should the subject property (as such term is defined herein) be found tax-exempt. Counsel for both the Township of Upper Freehold and DEP are the same in that matter as in this, and any issues of collateral estoppel or res judicata which may result from this decision shall be addressed in that matter if and when they are raised.

## Findings of Fact and Procedural History

This matter comes before the court on motion for summary judgment by plaintiff, Cream Ridge Golf, LLC ("plaintiff"),[2] seeking a local property tax exemption for subject property located at 181 Route 539, Upper Freehold Township, Monmouth County (the "subject property"). The subject property is identified on the municipal tax map of Upper Freehold Township ("Township"), as Block 40, Lots 1.01, 1.06. Plaintiff maintains that the subject property is exempt from local property tax as state-owned real property, leased to a private entity for use in furtherance of a public purpose.

This motion follows the January 26, 2018 denial of plaintiff's first motion for summary judgment by Judge DeAlmeida, due to disputed material facts, a lack of necessary information to decide the motion, and the necessity of adding the State as a party. Subsequent to denial of plaintiff's first motion for summary judgment, additional discovery has been exchanged, and the State has been joined in this action as a plaintiff. Accordingly, the court makes the following findings of fact pursuant to R. 1:7-4.

I. History of the Property, Lease, and Operating Agreement

The subject property is known as Cream Ridge Golf Course, and its land and improvements are owned by the New Jersey Department of Environmental Protection ("DEP"). Originally acquired by Frank Miscoski pursuant to a deed dated April 29, 1952, and recorded May 1, 1952, the subject property had been operated as a private golf course by Mr. Miscoski and his family

[2] Plaintiff has standing to challenge the local property tax assessment as the tenant responsible for payment of property taxes, pursuant to our Supreme Court's interpretation of an aggrieved taxpayer under N.J.S.A. 54:3-21. Village Supermarkets, Inc. v. West Orange Twp., 106 N.J. 628 (1987).

from 1958 onwards. On April 3, 2003, the Miscoski Associates[3] leased a portion of the subject property to A & KU Enterprises, Inc. ("A & KU") for operation of a restaurant (the "Lease"). The Lease commenced on April 1, 2003, and ended on December 31, 2003, with three, five-year options available under the same terms as the initial agreement.

The subject property was purchased on May 12, 2006 by the DEP from the Frank Miscoski Trust ("Trust")[4] through the Green Acres Program.[5] The subject property comprises a golf course, pro shop, maintenance structures, driving range, and the aforementioned restaurant, now known as the Roost. In conjunction with the sale of the subject property, the Lease with A & KU was assigned to the DEP, as landlord. Similarly, a separate lease with Cream Ridge Golf Club, Inc. for operation and maintenance of the golf course, pro shop, and driving range on the subject property was assigned to the DEP, as landlord, and expired on December 31, 2011.

On August 16, 2011, the Lease was amended to afford more oversight powers to the DEP, as landlord (the "Amended Lease"). Section five of the Amended Lease requires the tenant to maintain financial records for six years to permit the DEP to assess and review the profitability of the restaurant. This obligation includes the submission of financial reports annually on February 28. Section ten of the Amended Lease requires the tenant to annually provide the DEP with

[3] Subsequent to Mr. Miscoski's original purchase of the property, various tranfers and apportionments of ownership interests were made amongst various family members, trusts, and entities owned and controlled by family members, such as Miscoski Associates.

[4] Although the court references only the Trust for simplicity, the transfer involved all those holding ownership interests in the subject property at the time, including the Trust, Ellen Miscoski, William Miscoski, Kenneth Horner, Kathleen Horner, Donna Miscoski, James Miscoski (collectively "Miscoski Associates"), and Cream Ridge Golf Club, Inc.

[5] The Green Acres Program is governed by a collection of statutes and administrative code sections: the Green Acres Statutes, N.J.S.A. 13:8A-1 to -56; Garden State Preservation Trust, N.J.S.A. 13:8C-1 to -42; and Green Acres Program Rules, N.J.A.C. 7:36-1 to -26.

information regarding the operation and management of the restaurant. This information includes various aspects of the operation and management of the restaurant, and requires DEP approval of the pricing and types of food offered; hours of operation; time, selection, and pricing of alcoholic beverages served; any marketing or improvement plans for the restaurant; and any plans to use the banquet facilities for special events. In addition, the rent for the restaurant was fixed at five percent of the gross receipts, less sales taxes and return sales, based on the prior month's sales. The Amended Lease became effective on January 1, 2012. The Amended Lease was subsequently assigned to Meticulous Golf Management, LLC on October 10, 2012 "(Meticulous Golf"), with a further assignment to Linx Golf Management, LLC ("Linx") on February 12, 2015. With all of the options exercised, the Amended Lease expired on December 31, 2018, but has continued as a month-to-month renewal pending resolution of this litigation.

Separately, on August 3, 2011, the DEP, through its Division of Parks and Forestry, released a Request for Proposal ("RFP") for the management and operation of Cream Ridge Golf Course.[6] As a result of this process, the DEP and Meticulous Landscaping, Inc. entered into an agreement for the operation and management of the golf course, pro shop, and driving range dated March 1, 2012 (the "operation agreement"). The operation agreement bore an initial term of six years, and a fourteen year renewal option that is subject to approval of the DEP. The operation agreement provided Meticulous Landscaping, Inc. with control of the day-to-day operations of the golf course and associated facilities "consistent with the operation of a public golf facility." However, DEP reserved the right to terminate the operation agreement if it determined that any provision was violated. The operator is required to pay an annually increasing base payment with

[6] The subject property is operated by the DEP's Division of Parks and Forestry, subjecting the subject property to the requirements of N.J.S.A. 13:1L-1 to -36.

an additional payment of fifteen percent of gross revenues. The operation agreement was amended on May 22, 2012, to change the name of the operator to Meticulous Golf.

On February 12, 2015, both the operation agreement and the Amended Lease were assigned to Linx. All terms contained in operation agreement and the Lease continue to govern the relationship between Linx and DEP.[7] On May 21, 2015, the operation agreement was again amended to change the operator's name to Cream Ridge Golf, LLC ("Cream Ridge Golf"), a wholly owned subsidiary of Linx. The restaurant is currently operated by Cream Ridge Hospitality, LLC ("Cream Ridge Hospitality"), a wholly owned subsidiary of Linx. Cream Ridge Hospitality manages the restaurant in accordance with the terms of the Amended Lease.

II. Current Operation of the Restaurant

In support of its motion, plaintiff submitted the certification of Stephen Rice, CEO of Linx, as well as the March 5, 2019 deposition transcript of George Chidley, Manager of the Office of Leases and Concessions for DEP.

In his certification, Mr. Rice set forth the status of ownership and use of the subject property relevant to the tax year under appeal. He stated that during the day, 95% of all restaurant patrons are golfers, and during the evening restaurant patrons consist of a mix of non-golfers and golfers. Further, he described the restaurant's use for banquets and special events as accounting for 7.8% of Cream Ridge Hospitality's gross revenues in 2017. He approximated that 75% to 80% of these banquets and special events were golf-related outings. Finally, he detailed DEP's management

[7] Although the initial six year term of the operation agreement expired in 2018, the fourteen year renewal term has not been exercised, and the terms of the agreement have been continued in hold-over status pending resolution of this litigation. Section 34 of the operation agreement explicitly allows for continued operation of the subject property following expiration of the operation agreement, subject to all terms and conditions of the operation agreement, and at the sole discretion of the DEP.

oversight of various elements of the restaurant, including pricing, renovations, repairs, equipment purchases, and the removal of equipment.[8]

Mr. Chidley's deposition testimony was offered in support of DEP's position that the restaurant should be exempt from local property tax. During his deposition, he testified that the inclusion of food and alcohol service is necessary to support the golf course, and provides golfers with a better experience. He further testified that the year-round and extended hours of operation of the restaurant are necessary to support its viability, as it avoids the necessity of hiring and firing of restaurant employees on a seasonal basis. Finally, he testified that the Amended Lease is being renewed on a month-to-month basis, that the operation agreement was being continued in hold-over status, and that DEP was awaiting conclusion of this litigation before taking further action with regard to either the Amended Lease or operation agreement.[9]

The Township submitted no evidence contradicting any of the above factual assertions. Rather, the Township relies entirely upon its tax assessor's opinion that the restaurant is disassociated from operation of the golf course based on its advertisements, hours of operation, and services offered to non-golfers. Further, the Township has adopted the legal position that plaintiff's obligation to pay any property taxes assessed against the subject property, under the operation agreement, precludes any application for local property tax exemption. Specifically, the Township relies upon specific language contained in the Amended Lease, RFP, and operation agreement, as well as other documents.

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[8] In his certification, Mr. Rice references these requirements as contained in the operation agreement with DEP, whereas these provisions are actually contained in the Amended Lease. This minor misstatement does not impact the force or credibility of Mr. Rice's certification.

[9] Following conclusion of this litigation, the DEP anticipates engaging in an RFP process for operation of the restaurant in conjunction with the golf course.

Section 9 of the Amended Lease provides that "[a]ny real estate taxes attributed to the Leased Premises [restaurant] or the operation thereof shall be paid by the Operator of Cream Ridge Golf Course." Section 1.5 of the RFP provides that "[t]he Operator shall be required to pay all operating expenses, including utilities and taxes, if applicable", and Section 1.5.1 of the RFP and Section 18 of the operation agreement both provide, in relevant part, that "the Operator will be required to pay all property taxes assessed on the Golf Course Property and [the restaurant] . . . ." The Township also relies upon a November 21, 2006 letter from the DEP to the Township's former assessor, advising of the DEP's acquisition of the subject property, and that they "are not requesting that this State-owned property be tax exempt at this time." Finally, the Township relies upon a May 15, 2014 letter from the DEP to Meticulous Golf, advising that failure to "pay all property taxes assessed on the Golf Course Property and [restaurant]," constituted a violation of the above referenced Section 18 of the operation agreement. None of these documents, however, in any way contradict the testimony of Mr. Rice or Mr. Chidley.

As the Township has submitted no evidence disputing the statements made in the certification of Mr. Rice or the deposition of Mr. Chidley, the court adopts the respective assertions of Mr. Rice and Mr. Chidley therein as undisputed facts.

## Conclusions of Law

I. Summary Judgment Standard

Summary judgment is warranted when "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). All evidence presented must be viewed in "the light most favorable to the non-moving party" but trial courts are encouraged "not to refrain from granting summary judgment when the proper circumstances present themselves." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 541

(1995). If the evidence presented by the non-moving party does not create a genuine issue of material fact, and solely provides immaterial or insubstantial facts, it will be insufficient to defeat the motion. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). In other words, where the evidence "is so one-sided that one party must prevail as a matter of law," the court must grant summary judgment. Ibid.

II. Tax Exempt Status of Property Under N.J.S.A. 54:4-3.3, 2.3 and 1.10

Real property in the State of New Jersey is annually assessed and uniformly taxed unless specifically exempt. N.J. Const. art. VIII, § 1, ¶ 1; see also N.J.S.A. 54:4-1. Property owned by the State or its instrumentalities is tax-exempt when used for public purposes. N.J.S.A. 54:4-3.3 ("Section 3.3"). Generally, tax exemptions are strictly construed as they are an exception to the constitutional requirement that all property is taxed uniformly. Twp. of Holmdel v. N.J. Hwy. Auth., 190 N.J. 74, 88 (2007). However, "tax immunities for government authorities should be liberally construed because they facilitate the provision of public services." Ibid.

The exempt status of property owned by the State and leased to a non-exempt entity is governed by N.J.S.A. 54:4-2.3 ("Section 2.3"). Section 2.3 provides,

> 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.
>
> [N.J.S.A. 54:4-2.3.]

Should the exempt land be used by a non-exempt entity, through a mechanism other than a lease, N.J.S.A. 54:4-1.10 ("Section 1.10") states in pertinent part,

> When 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 section

> 1 of P.L.1949, c. 177 (C. 54:4-2.3) or otherwise, the real property shall be assessed and taxed as real property of the private party.
>
> [Ibid.]

Thus, Section 1.10 closes "a loophole in N.J.S.A. 54:4-2.3 by eliminating the artificial distinction between leased property and property used under a non-lease arrangement." N.J. Hwy. Auth. v. Town of Bloomfield, 8 N.J. Tax 637, 642 (Tax 1987).

However, case law makes clear that regardless of any lease or other arrangement with a non-exempt entity, such property may retain its exempt status so long as the property is used in furtherance of a public purpose. See Todd Shipyards Corp. v. Weehawken, 45 N.J. 336, 344 (1965); Walter Reade, Inc. v. Dennis, 36 N.J. 435, 441 (1962); Moonachie v. Port of New York Authority, 38 N.J. 414, 428 (1962); Bloomfield v. Div. of Tax Appeals, 84 N.J. Super. 19, 22 (App. Div. 1964). "Even where government agencies lease property to private entities, exemptions should be liberally construed because they ultimately favor private-sector activities [that] the state considers to be valuable." Holmdel, 190 N.J. at 88 (internal quotation marks omitted).

The management and operation of the Cream Ridge Golf Course, including its pro shop and driving range, are subject to the operation agreement. The management and operation of the restaurant is subject to the Amended Lease. Under either agreement, the analysis is the same under Section 1.10 and Section 2.3, as both require an inquiry into whether the use of the subject property is in furtherance of a public purpose. The Township conceded during oral argument that the operation of the golf course constitutes a public purpose, but argued that operation of the restaurant does not, and further argued that the terms of the RFP, Amended Lease, and operation agreement preclude application of tax exemption. Despite this concession, the court will address the issue of local property tax exemption for the entire subject property and all uses upon it.

## III. Public Purpose under Section 3.3, Section 1.10, and Section 2.3

When property is used by or leased to a private, for-profit entity, the relevant inquiry under either Section 1.10 or Section 2.3 is whether the lease or agreement furthers the property's use for a public purpose as is otherwise required for exemption under Section 3.3. Walter Reade, 36 N.J. at 441; Holmdel, 190 N.J. at 88; Bloomfield, 84 N.J. Super. at 22. The New Jersey Supreme Court has stated,

> The concept of public purpose is a broad one. Generally speaking, it 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. Moreover, it cannot be static in its implications. To 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.
> [Roe v. Kervick, 42 N.J. 191, 207 (1964).]

The public purpose of a government agency is defined by its enabling statute, and it is against the statute that use must be weighed in determining the applicability of an exemption. Moonachie, 38 N.J. at 423. Further, a public purpose is not lost merely because a government agency generates income from the property's use, but when the income related use becomes primary, the exemption is lost. Id. at 426-27.

The DEP purchased the subject property in 2006 pursuant to the Green Acres Program, using funds appropriated from the Garden State Green Acres Preservation Trust Fund Act. N.J.S.A. 13:8C-1 to -42 (the "Green Acres Act"); see also N.J.S.A. 13:8A-1 to -55 ("Green Acres Statutes"), N.J.A.C. 7:36-1 to -26 ("Green Acres Program Rules"). The Green Acres Act provides that "[m]oneys appropriated from the Garden State Green Acres Preservation Trust Fund to the Department of Environmental Protection shall be used by the department to . . . [p]ay the cost of acquisition and development of lands by the State for recreation and conservation purposes." N.J.S.A. 13:8C-26.

a. Golf Course

Various statutory and regulatory provisions establish golf as a recreational activity. Most importantly, the State Park and Forestry Resources Act (the "Act"), governing the Department of Parks and Forestry as operator of a property, defines "recreational activities" to include golf. N.J.S.A. 13:1L-3. In the corresponding administrative code sections, golf courses are listed as facilities falling within the purview of the Act. N.J.A.C. 7:36-25.10. Lastly, in the legislative history for the 1971 Land Acquisition Act of 1971, N.J.S.A. 13:8A-19 to -34, golf courses are identified as recreational facilities. New Jersey State Department of Community Affairs, New Jersey Open Space Policy Plan, 106 (1968).

These provisions clearly establish that golf courses purchased by DEP, and operated for recreational purposes, fulfill a public purpose assigned to the DEP. As such, Cream Ridge Golf Course, its pro shop, and driving range, constitute the type of recreational facilities envisioned under the statute, and are exempt from local property taxation under Section 3.3 and Section 1.10.

b. The Restaurant

In addressing the status and impact of the restaurant, the court highlights that the:

> [DEP] shall have the authority to grant such rights or privileges to individuals or corporations for the construction, operation and maintenance for private profit of any facility, utility or device upon the State parks and forests, lands and waters as the department shall find necessary and proper for the use and enjoyment of the lands by the public.
>
> [N.J.S.A. 13:1L-6 (emphasis added).]

Under this provision, the DEP is authorized to allow private entities to operate and maintain land in a manner necessary and proper to support the DEP's public purpose for the subject property. This principle aligns with the fact that incidental uses of public property in furtherance of the statutory public purpose will not void an otherwise applicable exemption. See Moonachie, 38 N.J. at 427.

Specific to the current case, privately operated restaurants located on public property have been found exempt when supporting the primary public purpose. See, e.g., Walter Reade, 36 N.J. at 441. The service of non-intended customers in addition to intended customers, even if substantial, will not lessen the public purpose. Bloomfield, 84 N.J. Super. at 21-22.

In Bloomfield, the Appellate Division found a restaurant owned by the New Jersey Highway Authority and located on the Garden State Parkway exempt from taxation. Id. at 24. The restaurant had separate access from the Parkway and local roads in Bloomfield, with the entrances being divided by a barrier. Id. at 20. The court concluded that the property was primarily devoted to the public purpose of serving the highway patrons. Id. at 22. Specifically, the court stated that the "non-Parkway portion of the business, although concededly substantial, is nevertheless an incidental source of additional revenue to the licensee." Id.

Most recently, the Appellate Division reversed a Tax Court decision declaring a restaurant operated on the Kean University campus by a for-profit entity to be non-exempt. Gourmet Dining, LLC v. Union Twp., A-4799-17T3 (App. Div. May 31, 2019) (slip op. at 2).[10] In so holding, the court found that the attention brought to the University from the restaurant, the revenue provided to the University from the restaurant, the regular patronage of the restaurant by the students and their parents, and the restaurant's location on the campus, as persuasive facts for granting the exemption. Id. at 11.

Here, the court finds plaintiff's and DEP's arguments persuasive that the provision of food and beverages has become an expected amenity to the golf and recreational experience, and that the restaurant's existence is necessary to the golf course's success. This is further supported by

[10] Approved for Publication May 31, 2019. A Petition for Certification to the New Jersey Supreme Court was filed on June 24, 2019 and remains pending.

the State's oversight and control of various aspects of the restaurant pursuant to the terms of the Amended Lease, ensuring it continues to serve as an amenity in furtherance of the golf course's successful operation. Moreover, the factors the Appellate Division found persuasive in Gourmet Dining are equally applicable to the restaurant here: the restaurant is located directly adjacent to the golf course, the large percentage of patronage from golfers, and the additional revenue provided to the DEP.

Additional support for provision of amenities as fulfilling the public purpose of recreation can be found in Jersey City v. State Dep't of Envtl. Prot., 227 N.J. Super. 5 (App. Div. 1988). There, the court held that the development of a public marina, including a boat storage and repair facility, parking area, and a coffee shop, was an acceptable recreational purpose as defined by the Green Acres Program. Id. at 13, 17. This decision, while not addressing the local property tax exemption of the property, established that the DEP's development and maintenance of a marina and its accompanying amenities further the recreational purpose of "boating." Id. at 22-23.

Consistent with these opinions and statutory authority, this court finds that the restaurant facility is exempt from local property tax as an amenity provided in furtherance of ensuring the success of the golf course. Amenities to a golf course such as a driving range, pro shop, and restaurant make it competitive with other golf courses, as these amenities have come to be expected as part of the overall golf experience. The court finds that these amenities are a reasonable provision in support of the DEP's recreational purpose in owning the property.

In contrast, Township relies on Twp. of Holmdel, 190 N.J. 74, to support its contention that the restaurant portion of the subject property is not entitled to an exemption. However, this case is distinguishable. In Twp. of Holmdel, the New Jersey Highway Authority built an amphitheater and later a reception center, operated for-profit. Id. at 79, 81. The amphitheater was

built under the Highway Authority Act, which allowed the New Jersey Turnpike Authority to construct and maintain "highway projects" defined as "any express highway, superhighway or motorway . . . together with such adjoining park or recreational areas and facilities as the Authority . . . shall find to be necessary and desirable to promote the public health and welfare." Id. at 79 (citation omitted). This statutory definition was later amended to only include projects that were directly related to the use of highways and facilities already constructed. Id. at 80. Subsequent to the amendment, the New Jersey Highway Authority changed the use of an existing facility by converting it into a reception center, which was found by a governmental investigative committee to be a violation of the amendments made to the statute. Id. at 81-82. The reception center was leased to a private entity to operate and host events at the facility, with annual payments and a portion of the profits going to the Authority. Id. at 82. The Court ultimately held that the reception center was not entitled to an exemption from local property tax. Id. at 99.

While the use of the property in Twp. of Holmdel as a reception center was contrary to the express amendments of the enabling statutes, no such issue exists in this matter. Statutory and regulatory guidelines specifically authorize the DEP to operate golf courses for recreational purposes, N.J.S.A. 13:1L-3, as well as allow for operation of its facilities for private profit. See N.J.S.A. 13:1L-6(a). There are no legislative or administrative enactments or amendments suggesting that operation of amenities of a DEP owned recreational facility should not be exempt.

Defendant also directs the court's attention to the extended hours of the restaurant as evidence of a lack of a public purpose. The fact that the restaurant is operated year-round and past the operational hours of the golf course does not detract from this court's decision. The restaurant supports the success of the golf course during the times the course is in use, as well as during off-hours by creating a location for social gatherings in direct proximity to the golf course. Further,

year-round operation provides a continuous stream of income, which supports the operative success of the restaurant. It would be unreasonable, and not in conformity with statutory provisions or proper deference to the determinations of the DEP to require the restaurant to close and dismiss all staff when the golf course is in limited use. The extended operation of the restaurant in no way diminishes its support of the subject property's public purpose.

c. Additional Arguments by Defendant

The court also finds unpersuasive Township's argument that the contemplation of property taxes to be paid under the operation agreement, Amended Lease, and RFP should preclude application for tax-exempt status. The language contained in all three documents directs the operator of the golf course to "pay all property taxes assessed," while a preceding provision in the RFP requires payment of "all operating expenses, including utilities and taxes, if applicable." Even in the absence of the RFP's "if applicable" language, the direction to "pay all property taxes assessed" is clearly intended to assign an obligation to pay property taxes in the event that they are actually owed. The remaining documents supplied by the Township are similarly unpersuasive. The November 21, 2006 letter from the DEP to the Township regarding acquisition of the subject property does not promise that no tax exemption would ever be sought, but simply advised that the DEP was not "requesting that this State-owned property be tax exempt at this time." (emphasis added). Similarly, the May 15, 2014 letter from the DEP to Meticulous Golf, simply reiterated the terms of Section 18 of the operation agreement requiring payment of the local property taxes which had been assessed. No language in any of the relevant documents precludes an application for local property tax exemption.

Finally, Township argues that the state bidding procedures have been violated due to the application for tax-exempt status for the subject property, as well as the delay in rebidding,

resulting in a windfall to a private party, and violating the square corners doctrine.[11] In essence, Township alleges that the subject property was intended to be taxable at the time of bidding, and had it been known that the subject property would later be tax exempt, the bids for the subject property would have been substantially different, therefore benefitting the successful bidder at the expense of all other potential bidders.

This argument is entirely without merit. First, the RFP explicitly stated that the winning bidder would be responsible for payment of "all operating expenses, including utilities and taxes, if applicable." (emphasis added). Second, even discounting this provision in its entirety, the party making application for exemption here is not the original bidder to the RFP, but is an assignee who has made the application for exemption five years following conclusion of the RFP process. It is inconceivable to this court that application for an exemption for the 2017 tax year by an assignee of the operation agreement in any way impacts the fairness of the 2011 RFP process, nor is the DEP's delay in rebidding or renewing the Amended Lease or operation agreement contrary to public policy.

In Jersey City, the municipality argued that the DEP violated the same public bidding laws, N.J.S.A. 52:34-6 to -20, as the Township does here. 227 N.J. Super. at 19. However, the court found that no bidding laws governing the leasing of DEP property were applicable, as the previous bidding statute, L. 1983, c. 324, § 6, e.d. September 1, 1983, was repealed, allowing the DEP "discretion to negotiate this kind of lease for public recreational purposes." Id. at 20.

During oral argument and in its papers, the DEP made clear that the expired Amended Lease and operation agreements have remained in month-to-month and hold-over status due to the

[11] The government and its agents are to act solely in the public interest, in other words turn square corners. F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 426 (1985).

present litigation, and its inability to adequately market the subject property due to the uncertainty of its operative value pending resolution of the tax exemption issue. The court agrees with this exercise of discretion by the DEP, and finds the Township's arguments unpersuasive.

## Conclusion

In light of the above, the court finds the subject property exempt from local property tax for the 2017 tax year under Section 3.3, Section 2.3, and Section 1.10, and judgment shall be entered accordingly.