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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

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**Presiding Judge**

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January 8, 2013

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Re: Flemington Trade Center v. Township of Raritan
Docket No. 016363-2009

Dear Counsel:

This letter constitutes the court's opinion after trial in the above-referenced matter. Plaintiff challenges the imposition of roll-back taxes on the subject property for tax years 2006, 2007 and 2008. For the reasons explained more fully below, the judgment of the Hunterdon County Board of Taxation affirming the imposition of roll-back taxes is reversed.

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## I. Findings of Fact and Procedural History

This letter opinion sets forth the court's findings of fact and conclusions of law after trial. R. 1:7-4.

Plaintiff Flemington Trade Center is the owner of real property located in defendant Township of Raritan. The property is designated by the township as Block 36.03, Lot 11 and is known as 14 Kings Court. The parcel is an undeveloped, 4.842-acre parcel with uneven topography. Approximately 50% of the lot is comprised of steep grades, a gully, and a creek. The remainder of the property, mostly along its border with an adjoining lot, is relatively level.

Prior to tax year 2009, the subject property received farmland tax assessment. It is not clear from the record why the property was granted farmland status despite the fact that it was less than five acres in size. See N.J.S.A. 54:4-23.2 (requiring that property be a minimum of five acres to qualify for farmland assessment). In addition, the evidence adduced at trial suggests that the property was not in agricultural or horticultural use at any time. See N.J.S.A. 54:4-23.2 (requiring that property be "actively devoted to agricultural or horticultural use . . . for at lease 2 successive years immediately preceding the tax year in issue" to qualify for farmland assessment). While plaintiff produced evidence that the property was mowed on an annual basis, the municipality produced photographs depicting the property as overgrown with brush, saplings and trees. Nor does the record contain credible evidence that agricultural or horticultural activity on the subject property met the income requirement of the farmland assessment statutes. See N.J.S.A. 54:4-23.5 (requiring that farming activity on subject property produce an average of at least $500 in income per year during the two-year period immediately preceding the tax year in issue).

Although the evidence suggesting that the property was preferentially taxed as farmland for several years without justification is troubling, the property's eligibility for farmland status in the years prior to 2009 is not before the court. The only question before the court is whether the municipal tax assessor correctly imposed roll-back taxes on the property after she determined in 2009 that the property did not qualify to be treated as farmland for tax purposes. In order to answer this question, it is necessary to understand what transpired on the property in the years prior to 2009.

The subject property is one of six contiguous lots (Lots 3, 4, 10, 11, 12, and 13) and two nearby, non-contiguous lots (Lots 19 and 21), the histories of which are relevant to this appeal. At one time, plaintiff owned all eight lots, which were undeveloped. Over the years, plaintiff sold most of the lots for development. Lot 11, the property that is the subject of this appeal, now sits at the end of cul-de-sac in a commercial area of the township. Most of the parcels in the vicinity of Lot 11 are developed with commercial entities, including a medical facility, a commercial printer, a hotel, and a non-retail postal facility.

At a time prior to 2005, plaintiff hired Rocky Russo, a local farmer, to conduct agricultural or horticultural activities on the lots, including Lot 11, for the purpose of securing farmland assessments while the parcels awaited development. It is not clear from the record when this arrangement commenced or how many of the eight parcels plaintiff owned when Mr. Russo began his activities on the properties.

Mr. Russo testified that during the relevant periods of time, Lot 11 was registered with the United States Department of Agriculture and was mowed with a 10-foot-wide tractor in accordance with soil conservation standards incorporated in federal law. The purpose of the mowing was to prevent woody and noxious weeds from taking over the property, which he was

directed to keep in a pasture state. Mr. Russo acknowledged that a portion of the property is not suitable for mowing because of steep terrain and the presence of a creek. Mowed materials from Lot 11 were not baled and no evidence was produced at trial that any harvested products from Lot 11 were sold or used by plaintiff or Mr. Russo for any purpose. Plaintiff produced no evidence establishing compliance with an established soil conservation program on the subject property. Nor could Mr. Russo explain the requirements of such a program. While he testified that he received payments from the federal government for soil conservation activities, he produced no evidence of any such payments and no written agreement with a federal agency with respect to the subject property. In addition, Mr. Russo could not state with certainty that the payments were for activities on Lot 11 and not for activities on farmland owned by his family in other parts of Hunterdon County.

In August 2005, plaintiff applied for farmland assessment for tax year 2006 for five of the lots (Lots 19, 4, 11, 12 and 13). It appears that the other three lots had been sold by plaintiff at the time that the application was filed. Lot 11, the subject property, was reported on the application to have 4.842 acres of harvested cropland. The application was supported by a letter to plaintiff from Mr. Russo. The letter stated that "[a]pproximately 10 acres of winter wheat was planted in November 2004 on lot 19. An estimated 400 bushels of wheat, worth $800, was harvested by June 2005. Lot 19 will be planted with 10 acres of winter (sic) by November 2005." The letter continued, "[t]he remaining lots, approximately 25 acres, will be used for mulch worth approximately $1,000. These lots will also be mowed to AMTA requirements." At trial it was determined that "AMTA" refers to the Agricultural Market Transition Act, 7 U.S.C. § 7201, et seq. The application for taxation as farmland was granted for tax year 2006.

In June 2006, plaintiff applied for farmland assessment of Lots 19 and 11 for tax year 2007. Plaintiff had sold all of the remaining lots by the time that the June 2006 application was filed. The application reported Lot 11, the subject property, to be 4.842 acres of harvested cropland. The application is supported by a letter from Mr. Russo to plaintiff. The letter states that "Lots 4, 11, 12, and 13, approximately 14 acres, were used for mulch worth approximately $750 in 2005. These lots were also mowed to meet AMTA requirements." The farmland assessment application was granted for tax year 2007.

In July 2007, plaintiff applied for farmland assessment for tax year 2008 for Lots 19 and 11. The application describes Lot 11 as 4.842 acres of harvested cropland. A letter from Mr. Russo supports the application. The letter states that "[f]or 2006, Lot 4 and 11 was (sic) used for mulch worth approximately $200. These lots were also mowed to meet AMTA requirements. For 2007, lot 11 will be used for mulch. The remainder of lots 11 and 19 that can not be harvested will be mowed to meet AMTA requirements." The farmland assessment application was granted for tax year 2008.

In July 2008, plaintiff applied for farmland assessment of Lots 19 and 11 for tax year 2009. As had been the case in prior years, Lot 11 is described in the application as 4.842 acres of harvested cropland. A letter from Mr. Russo submitted in support of the application states that for 2007 and 2008 "Lot 11 and the remainder of Lot 19 that can not be farmed" would be mowed to meet AMTA requirements. No mention is made of mulch being harvested from Lot 11.

After an October 2008 inspection of Lot 11, a newly appointed tax assessor for the township denied the application for tax year 2009. The denial was based on the size of Lot 11 and the assessor's opinion that plaintiff did not conduct agricultural or horticultural activity on the property during the two years preceding the tax year in question. The assessor credibly

testified that she observed extensive growth on the subject property, including weeds, brush, bushes and woody saplings. Photographs introduced at trial support the assessor's testimony. At least a portion of the property appears to be thickly populated with trees and bushes. An aerial tax map introduced into evidence shows areas of trees and clear areas on the subject property. A photograph of the property depicts a sign indicating that the parcel is being offered for sale for commercial development.

Having denied plaintiff's farmland assessment application for tax year 2009, the assessor filed a Notice of Assessment of Rollback Taxes with the Hunterdon County Board of Taxation seeking rollback taxes for the subject property for tax years 2006, 2007 and 2008. The reason for the assessor's request was her determination that there had been a change in use of the property from agricultural or horticultural use.

The Hunterdon County Board of Taxation entered a judgment affirming the imposition of roll-back taxes on the subject property for tax years 2006, 2007 and 2008. The taxpayer thereafter filed a timely Complaint in this court challenging the judgment of the Hunterdon County Board of Taxation.

On January 11, 2011, the court denied the taxpayer's motion for summary judgment. A one-day trial followed.

## II. Conclusions of Law

The preferential tax treatment of farmland and the assessment roll-back taxes have their origins in the State Constitution. In 1960, the Legislature passed L. 1960, c. 51, which provided that "[i]n the assessment of acreage which is actively devoted to agricultural use, [taxable] value shall not be deemed to include prospective value for subdivisions or nonagricultural use." In Switz v. Kingsley, 37 N.J. 566, 582-586 (1962), the Supreme Court held that this statute violated

the Uniformity Clause of the State Constitution, Art. VIII, §1, par. 1, which requires the application of the same standard of value to all real property for local property tax purposes. Id. at 585.

In response to the holding in Switz, the State Constitution was amended to provide that

> [t]he Legislature shall enact laws to provide that the value of land, not less than 5 acres in area, which is determined by the assessing officer of the taxing jurisdiction to be actively devoted to agricultural or horticultural use and to have been so devoted for at least the 2 successive years immediately preceding the tax year in issue, shall, for local tax purposes, on application of the owner, be that value which such land has for agricultural or horticultural use.
>
> Any such laws shall provide that when land which has been valued in this manner for local tax purposes is applied to a use other than for agriculture or horticulture it shall be subject to additional taxes in an amount equal to the difference, if any, between the taxes paid or payable on the basis of the valuation and the assessment authorized hereunder and the taxes that would have been paid or payable had the land been valued and assessed as otherwise provided in this Constitution, in the current year and in such of the tax years immediately preceding, not in excess of 2 such years in which the land was valued as herein authorized.
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> [N.J. Const. Art. VIII, § 1, par. 1(b).]

The Farmland Assessment Act of 1964 was enacted to implement the Constitutional amendment. The statute authorizes preferential tax treatment for "land, not less than 5 acres in area, which is actively devoted to agricultural or horticultural use and which has been so devoted for at least the 2 successive years immediately preceding the tax year in issue . . . ." N.J.S.A. 54:4-23.2. Land is deemed to be in agricultural use "when devoted to the production for sale of plants and animals useful to man . . . or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government . . . ." N.J.S.A. 54:4-23.3. "Land shall

be deemed to be in horticultural use when devoted to the production for sale of fruits of all kinds, including grapes, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products; or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal Government." N.J.S.A. 54:4-23.4. Land is deemed to be

> actively devoted to agricultural or horticultural use when the amount of the gross sales of agricultural or horticultural products produced thereon, and payments received under a soil conservation program . . . have averaged at least $500.00 per year during the two-year period immediately preceding the tax year in issue, or there is clear evidence of anticipated yearly gross sales and such payments amounting to at least $500.00 within a reasonable period of time.
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> [N.J.S.A. 54:4-23.5.]

N.J.S.A. 54:4-23.8 implements the second paragraph of the Constitutional amendment. The statute authorizes the imposition of roll-back taxes on property previously assessed as farmland as follows:

> [w]hen land which is in agricultural or horticultural use and is being valued, assessed and taxed under the provisions of [the Farmland Assessment Act of 1964], is applied to a use other than agricultural or horticultural, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes, in an amount equal to the difference, if any, between the taxes paid or payable on the basis of the valuation and the assessment authorized hereunder and the taxes that would have been paid or payable had the land been valued, assessed and taxed as other land in the taxing district, in the current year (the year of the change in use) and in such of the two years immediately preceding, in which the land was valued, assessed and taxed as herein provided.
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> [N.J.S.A. 54:4-23.8.]

The central issue before the court is whether N.J.S.A. 54:4-23.8 allows for the imposition of roll-back taxes on Lot 11. Statutory construction begins with the statute's plain language.

Merin v. Maglaki, 126 N.J. 430, 434 (1992). "A statute should be interpreted in accordance with its plain meaning if it is clear and unambiguous on its face and admits of only one interpretation." Board of Educ. v. Neptune Twp. Educ. Ass'n, 144 N.J. 16, 25 (1996)(quotations omitted). "[T]he best approach to the meaning of a tax statute is to give to the words used by the Legislature their generally accepted meaning, unless another or different meaning is expressly indicated." Public Serv. Elec. & Gas Co. v. Township of Woodbridge, 73 N.J. 474, 478 (1977)(quotations omitted).

N.J.S.A. 54:4-23.8 contains plain language. The statute authorizes the imposition of roll-back taxes where land: (1) "is in agricultural or horticultural use;" (2) "is being valued, assessed and taxed under the provisions of" the Farmland Assessment Act of 1964; and (3) "is applied to a use other than agricultural or horticultural." The statute also describes the year in which farmland treatment is denied as "the year of the change in use."

Our courts have had many opportunities to examine these unambiguous statutory provisions. A review of legal precedents reveals that it is well-established that roll-back taxes do not apply automatically because property previously assessed as farmland no longer qualifies for preferential treatment. Instead, rollback taxes may only be imposed when there has been a change in use of the property from agricultural or horticultural use to a use other than agricultural or horticultural or to nonuse. See e.g., Township of Burlington v. Messer, 8 N.J. Tax 274 (Tax 1986), aff'd, 9 N.J. Tax 634 (App. Div. 1987); Wilson v. Township of Hopewell, 23 N.J. Tax 240, 246 (Tax 2006); Township of South Brunswick v. Bellemead Dev. Corp., 8 N.J. Tax 616 (Tax 1987); Angelini v. Township of Upper Freehold, 8 N.J. Tax 644, 650-51 (Tax 1987); Township of Hamilton v. Estate of Lyons, 8 N.J. Tax 112, 120 (Tax 1986). The municipality has the burden of proving that there has been a change in use authorizing the assessment of roll-back

taxes. Miele v. Township of Jackson, 11 N.J. Tax 97, 99 (App. Div. 1989); Belmont v. Township of Wayne, 3 N.J. Tax 382 (Tax 1982). This court's en banc opinion in Bellemead Dev. Corp., supra, explains the purpose of N.J.S.A. 54:4-23.8:

> An integral part of farmland assessment, rollback taxes were enacted to protect municipalities from land speculators. Thus, while preferential assessment is designed to provide farmers with an incentive to continue farming, rollback taxes are designed "to discourage the land speculator."
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> [8 N.J. Tax at 623 (citing Township of Andover v. Kymer, 140 N.J. Super. 399, 405 (App. Div. 1976).]

The court concludes that the assessment of roll-back taxes is not authorized in the present case. The municipality has not established by a preponderance of the evidence that there was a change in use of the property. The evidence adduced at trial establishes that the property was put to the same use in tax years 2006, 2007, 2008 and 2009. Whether or not that use was an agricultural or horticultural use within the meaning of the Farmland Assessment Act of 1964 – and the evidence strongly suggests that it was not – the use did not change.

Mr. Russo credibly testified that he annually mowed Lot 11 in an effort to maintain the property in a pasture-like state. He also credibly testified that there were portions of the parcel that were not amenable to mowing because of topography and the presence of a stream. The photographic evidence establishes that a portion of the property had a field-like appearance and the remainder was overgrown with brush and small trees.

There is no credible evidence in the record that the products of Lot 11 were harvested, sold or otherwise put to use at any time, either while the property was assessed as farmland or when the assessor denied the tax year 2009 farmland application. The record contains no evidence establishing that anything – mulch, wood, or any agricultural or horticultural product—

was removed from the property. Mr. Russo's testimony established that he mowed the property and, when he finished mowing, he drove away on his tractor. There is no suggestion of baling, marketing, transporting, selling or otherwise using the mulch produced by Mr. Russo's mowing. His letters, submitted in support of annual farmland assessment applications, are vague, indicating that Lot 11, along with other properties "will be used for mulch worth" a particular dollar amount. No proof was offered that the dollar amount, or any dollar amount, was obtained for the mulch.[1]

Nor is there any reliable evidence in the record that Lot 11 was maintained in accordance with a soil conservation program pursuant to an agreement with a federal agency. Mr. Russo's letters state that the parcel "will be mowed to meet AMTA requirements." He did not explain those requirements or detail how his activities at the subject property satisfied the dictates of a soil conservation program. Plaintiff's counsel provided no statutory citation establishing mowing requirements in federal law and the record does not contain a written agreement with respect to soil conservation measures on Lot 11. Although Mr. Russo credibly testified that he received payments from the federal government with respect to farming activity, he did not provide convincing testimony that those payments were related to Lot 11 and not to other properties farmed by his family in Hunterdon County. No physical evidence of the payments, such as checks, bank statements or ledgers, was introduced as evidence.

[1] The court is not convinced by defendant's argument that Mr. Russo's January 2, 2008 letter attached to the tax year 2009 farmland assessment application proves that mulching activity at the property ceased in 2007 or 2008. While it is true that Mr. Russo referred to mulching activity on Lot 11 in prior correspondence, but referred only to mowing activity on Lot 11 in his January 2, 2008 letter, the taxpayer described Lot 11 as 4.842 acres of harvested cropland in the application. In addition, Mr. Russo testified that he mowed Lot 11 every year. He made no reference during trial to having changed his practices on Lot 11 during any of the years in question.

These evidentiary conclusions apply equally to tax years 2006, 2007, 2008 and 2009. The court finds as fact that Mr. Russo annually mowed the level portions of Lot 11 and left the cuttings on the property to serve as mulch in tax years 2006, 2007, 2008 and 2009. The remainder of the property was left in a natural state of overgrowth. No sale of an agricultural or horticultural product from Lot 11 took place during the relevant tax years. In addition, no activity on the property satisfied the requirements of a soil conservation program pursuant to an agreement with a federal agency during any of the tax years in question. The only change that took place with respect to the subject property during the relevant tax years is that the newly appointed assessor determined that the subject property did not qualify for assessment as farmland, both because the parcel is less than five acres and because she determined that the farming activity at the property did not satisfy the Farmland Assessment Act.

Because there was no change in the use of the property from an agricultural or horticultural use to a use other than an agricultural or horticultural use or to non-use during any of the relevant tax years, N.J.S.A. 54:4-23.8 was not triggered. The municipality, therefore, was not authorized to assess roll-back taxes on the subject property for tax years 2006, 2007 and 2008. If, as the municipality contends, and the evidence strongly suggests, the property was not entitled to be assessed as farmland for tax years 2006, 2007 and 2008, the municipality should have filed a timely appeal of the assessor's decision to grant plaintiff's farmland assessment applications for those tax years. See N.J.S.A. 54:3-21. The roll-back tax statute cannot be used to ameliorate the effects of an assessor's incorrect decision to grant a farmland assessment application for property, the use of which did not satisfy the statutory requirements for preferential treatment. Absent a change in use, the assessment of roll-back taxes is not statutorily authorized.

The court will issue a Judgment reversing the Judgment of the Hunterdon County Board of Taxation assessing roll-back taxes on the subject property for tax years 2006, 2007 and 2008.

Very truly yours,

Patrick DeAlmeida, P.J.T.C.