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June 21, 2022

VIA FEDERAL EXPRESS

City of Rye Board of Assessment Review
1051 Boston Post Road
Rye, New York 10580

Re: Tax Exempt Status – Playland parcel (146-20-1-6-2)

Dear Board of Assessment Review:

Our office has been retained to represent Standard Amusements LLC, the manager of Playland Amusement Park, located in Rye, New York (“Playland”) in connection with Playland’s tax-exempt status.

By letter dated May 26, 2022 addressed to Victor L. Mallison, Executive Director, Westchester County Tax Commission, the City of Rye (the “City”) gave notice of a change in the tax-exempt status of Playland by virtue of being managed by Standard Amusements LLC (hereinafter “Standard”), a for profit Delaware limited liability company. Enclosed is a copy of the letter dated May 26, 2022. The letter contains a number of inaccurate statements. More importantly, we write to inform you that the City’s analysis for revoking Playland’s tax-exempt status is wrong. New York courts already addressed this specific issue and ruled that a public property that serves the public is eligible for the tax exemption even when it is being managed, improved by, or leased to a private entity that also profits from that property. The legal cases below establish what constitutes public use for tax purposes and Playland, unequivocally, falls within that category.

As an initial matter, the City bears the burden of proving that Playland is no longer eligible for tax-exemption status under Real Property Tax Law § 406 (1). *Congregation Rabbinical Coll. of Tartikov, Inc. v. Town of Ramapo*, 17 N.Y.3d 763, 764 (2011) (“[W]hen a municipality seeks to revoke a previously granted tax exemption, it bears the burden of proving that the real property is now subject to taxation.”). The City claims that Playland lost its tax-exemption status because the Management Agreement entered into between the County of Westchester and Standard (the “Management Agreement”) transfers complete control of Playland to Standard. As further basis for revoking the tax exemption, the City states that Standard collects monies and can retain profits and has the responsibilities of ownership including payment of utilities, maintenance and repairs of Playland. None of these points, which

are not entirely accurate, have any bearing on the legal standard of eligibility for tax-exemption under RPTL § 406 (1), which only requires that the property be “held for a public use[.]”

Courts broadly define the term ‘public use’ as “encompassing virtually any project that may further the public benefit, utility, or advantage.” *Vitucci v. New York City School Const. Auth.*, 289 A.D.2d 479, 480-81 (2d Dept. 2001) (internal quotations omitted); *Town of N. Hempstead v. County of Nassau*, 162 A.D.3d 705, 708 (2d Dept. 2018) (Public use “means that the property should be occupied, employed, or availed of, by and for the benefit of the community at large, and implies a possession, occupation and enjoyment by the public, or by public agencies.”) (Internal quotations omitted). Contrary to the City’s position, “[p]rojects may have a public purpose notwithstanding that private entities may directly benefit therefrom[.]” *Vitucci*, 289 A.D.2d at 480-81; *see also*, *Gallo v. City of New York*, 51 A.D.3d 630, 631 (2d Dept. 2008) (“The existence of a profit motive by lessees does not preclude the operation of the property from serving as a public purpose[.]”); *Erie County v. Kerr*, 49 A.D.2d 174, 179 (4th Dept. 1975) (“The fact that a private business derives a benefit or that the county has leased the property to a private party does not by itself defeat the exemption, if the overall use is deemed to be in the public interest.”) (Internal citation omitted). Thus, Standard’s management of - and profit from - Playland are irrelevant to the tax-exemption legal analysis.

Courts routinely restore tax-exemption status to properties that are entirely controlled by private entities but provide services to the public. *Harrison v. County of Westchester*, 34 Misc. 2d 1020, 1033 (Sup. Ct. Westchester Cty. 1962), *affd.* 13 N.Y.2d 258 (1963) (The public availability may come in the form of services offered to the public.) This holds true even when the facility is leased to a private, for-profit provider of services to the public. *Matter of Panorama Flight Serv. Inc. v. Town of Harrison*, 25 Misc. 3d 1201(A) (2009) (Lessee provided indoor hangar storage, aircraft rentals, flight training, deicing, and ground services.) In a comparable case, a court ruled that an indoor arena operated by private entities is held for public uses and thus tax exempt. *Dubbs v. Board of Assessment Review*, 81 Misc. 2d 591, 600 (Sup. Ct. Nassau Cty. 1975). The fact that an arena enters into leases with private contractors and charges admissions fees does not bar it from exemption. *Id.* Even when language in a lease agreement purports to place title to a property in the lessor, the property may still be designated as tax-exempt municipal property if it is being used for a public purpose and the municipality retains beneficial ownership. *Spectapark Assocs. v. City of Albany, Dept. of Assessment & Taxation*, 12 A.D.3d 800, 800 (3d Dept. 2004); *see also*, *County of Clinton v. Drollette*, 6 A.D.3d 968, 969 (3d Dept. 2004) (25-year lease agreement with a private corporation to run a landfill); *Erie County*, at 176 (private entity to occupy and maintain the stadium for 25 years plus three optional five-year renewal periods). As an amusement park open to the public, Playland’s services qualify as public use for purposes of the exemption.

The Management Agreement specifically provides for maintaining Playland available to the public stating in part in Section 2, A:

The Manager recognizes and understands that it must manage and operate Playland Park consistent with its current recreational uses and as a public park facility.

Consistent with Playland's use as a public service, the Management Agreement obligates Standard to keep spaces in Playland maintained and open to the public and to provide parking spaces to ensure the public's free access to Playland. See Section 2, C. Every aspect of the Management Agreement is tethered to Playland's use as a public amusement park.

Standard and the County filed grievances on June 17, 2022. We ask that the Board of Assessment Review consider the points and law raised in this letter and reverse the City's improper change in the tax exemption status for Playland. In light of the overwhelming legal and factual support for Playland's continued status as a tax-exempt property under RPTL § 406 (1), were the City to continue pursuing revocation of that status, Standard will commence a proceeding at the appropriate time and will seek sanctions against the City for maintaining its frivolous position pursuant to 22 NYCRR § 130-1.1(a) and (c)(1).

Very truly yours,

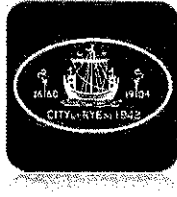
/s/ Alfred E. Donnellan

ALFRED E. DONNELLAN

Enc.

cc: Patrick McEvily, MAI, SRA, Rye City Assessor
(By FedEx and Email: assessor@ryeny.gov)

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CITY OF RYE

May 26, 2022

Victor L. Mallison
Executive Director
Westchester County Tax Commission
110 Dr. Martin Luther King Jr. Blvd. Room L-221
White Plains, NY 10601
Re: Tax Exempt Status – Playland parcel (146-20-1-6-2)

Dear Vic,

Given the unusual and exigent circumstances regarding Playland, we are notifying the County of a change in the tax exempt status of Playland Amusement Park. After reviewing the Second and Restated and Amended Playland Management Agreement between Westchester County and Standard Amusements LLC, portions of the formerly exempt property are no longer exempt and are taxable because those portions are under the complete control of Standard Amusements LLC which is a “for profit Delaware limited liability company”. Standard is a subsidiary of United Parks, an owner and operator of amusement and water parks throughout the United States and United Parks is a subsidiary of Purchase Capital, an investment firm, which seeks to provide investors with “long-term” value creation. The amusement parks arm of Purchase Capital is an investment that pays dividends on the profits that accumulate from the operation of the amusement parks. As determined for reasons below, Standard Amusement is the beneficial owner of Playland and has taken over management of Playland for private corporate profit and not for any public purpose.

Standard Amusements began full, exclusive management of Playland on December 1, 2021 and the agreement will continue for 30 years (through 2051). Under the management agreement Standard Amusements effectively has complete responsibility for, maintenance of, and repair of the amusement park, the beach and pool, the parking lot, and sections of the boardwalk exclusive of the Ice Casino, the Tiki Bar and the Westchester Children’s Museum and is the receiver of all profits remaining after payment of the costs necessary to operate the amusement park.

As stated in the Agreement in SECTION 2A. *“In accordance with the terms and conditions of this Agreement, Manager at its sole cost and expense shall manage, operate, improve, maintain and repair Playland Park (further)...the Manager shall be responsible to obtain and /or acquire all supplies, materials, accessories and equipment necessary to operate Playland Park.”*


Tax Exempt Status – Playland parcel (146-20-1-6-2), cont'd

The tax exemption is being revoked because the management agreement has transferred complete control of the amusement park, parking lots, sections of the boardwalk, the pool and the beach , (excluding the Tiki Bar, The Ice Casino and the Children's Museum), to Standard Amusements LLC. Standard Amusements LLC is the beneficial owner of the property because of, among other things, the 30 year length of the management agreement. Standard has the right to set and collect fees for access to Playland; Standard can collect monies from all amusements, concessions, parking lots, the pool and beach and can retain all profits after payment of operating costs. Standard has all the responsibilities of ownership including payment of all utilities, maintenance and repair of the Park; must pay annual real estate taxes of \$50,000 per annum and any amount above \$100,000; has an obligation to pay Westchester County an annual management fee of \$300,000 in year 1 and \$400,000 in year 2 (years 3-30 the fee is \$400,000 per year plus the change in the Consumer Price Index); and, must pay 5% to Westchester County annually for any amounts received over the annual "target revenue" of \$12 million (minus sales tax collections); must invest \$35 million in equipment and physical improvements to the park for attractions, Guest Experience, Operations and Overhead (schedule C-1); can move the Historic Rides and has title to all Fixed Amusement Park Rides; may build all new rides and attractions, may open portions of the park year round; and, must pay Westchester County a minimum of \$400,000 per annum for police and park ranger staffing.

As established in previous legal cases, portions of publicly-owned property used for private for-profit purposes must be assessed and pay real estate taxes on the portion of the public property devoted to "for profit" uses.

If you have any questions regarding this matter, please contact me.

Sincerely,


Patrick McEvily, MAI, SRA
Rye City Assessor

cc:

Kathleen O'Connor
Commissioner
Westchester County Department of Parks, Recreation and Parks
County of Westchester
450 Saw Mill River Rd
Ardsley, NY 10502