To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER:
TAX CERTIORARI AND CONDEMNATION PART

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In the Matter of the Application of

COUNTY OF WESTCHESTER and STANDARD AMUSEMENTS, LLC,

Petitioners,

-against-

THE CITY OF RYE, a Municipal Corporation, ITS ASSESSOR AND BOARD OF ASSESSMENT REVIEW,

Respondents.

For a Review under Article 7 of the RPTL.

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DECISION & ORDER
Index No. 66977/2022
Motion Sequence #1

MINIHAN, J.

The following papers were considered on this motion by Petitioners for an Order: (1) annulling and setting aside a certain assessment roll; (2) restoring a certain exemption pursuant to Section 406 of the Real Property Tax Law ("RPTL"); (3) restoring the property assessment at issue to the wholly exempt portion of the assessment roll; (4) refunding to Petitioners all unlawfully assessed taxes paid to Respondents as of the date of the Order of the Court; (5) sanctioning Respondents for their frivolous conduct in revoking the tax-exempt status contrary to well settled law; (6) and granting any such other and further relief to Petitioners as may be just and proper, together with the legal fees, costs and disbursements of this proceeding:

Notice of Petition/Petition, Exhibits 1-3
Notice of Motion, Affidavit in Support of Motion, Exhibits 1-3
Statement of Material Facts, Memorandum of Law in Support
Answer, Exhibits A-B
Affidavit in Opposition to Motion, Exhibits A-C
Affirmation in Opposition to Motion, Exhibits A-E
Affidavit in Opposition to Motion, Exhibits A-E

Memorandum of Law in Opposition
Affirmation in Reply, Exhibits 1-2
Memorandum of Law in Reply with Appendix
Affirmation, Exhibits 1-4
New York State Courts Electronic Filing System ("NYSCEF") file (docs #1-47)

Upon the foregoing papers, this motion is determined as follows:

Factual and Procedural Background

On October 13, 2022, Petitioners, County of Westchester ("County") and Standard Amusements, LLC ("Standard Amusements") commenced this proceeding by filing a Notice of Petition and Verified Petition against Respondents, the City of Rye, a municipal corporation ("City"), its Assessor ("Assessor") and Board of Review ("BAR") (Respondents collectively referred to as "Rye"). The Petition seeks judicial review pursuant to Article 7 of the Real Property Tax Law ("RPTL") with respect to the assessment of certain real property known as Playland Park located in the City of Rye, New York, County of Westchester, and designated on the Tax Map of the City of Rye as Section 146-20, Block 1, Lot 6-2 ("Playland").

The Petition contains the following allegations. Playland is a public amusement park. Pursuant to a Second Restated and Amended Playland Management Agreement dated July 22, 2021 (the "Management Agreement"), Standard Amusements operates and manages Playland. Pursuant to the Management Agreement, Standard Amusements co-managed Playland together with the County during the period between July 22, 2021 and December 1, 2021. After December 1, 2021, Standard Amusements commenced full management and operation of Playland, subject to the terms of the Management Agreement. The Petition states that Standard Amusements is contractually bound to operate Playland as a "public park facility" open to the general public consistent with Playland's historic recreational use. The Petition also states that the County is currently, and has been at all times relevant herein, the property owner of Playland and that upon information and belief, in all years prior to 2022, Playland had tax-exempt status under RPTL § 406 (1).

Additional allegations set forth in the Petition are as follows. By letter dated May 26, 2022 to Victor L. Mallison, Executive Director, Westchester County Tax Commission, the Assessor revoked the tax-exempt status of Playland by virtue of it being managed by Standard Amusements (the "May 26, 2022 letter"). Standard Amusements has standing to bring an Article 7 proceeding as it has been aggrieved by Rye's revocation of the exempt status of Playland under RPTL § 406 (1) and it has been expressly authorized by the County to bring an Article 7 proceeding. The County has standing to bring the proceeding as the owner of Playland. Petitioners made application to have Playland's real property's tax exemption restored and its assessment corrected and reduced for the 2022 assessment roll by duly filing with the Assessor and the BAR an application specifying the respects in which the assessment complained of was incorrect and protesting against the same. The Assessor and the BAR refused and still refuse to

restore the tax exemption and correct the assessment to the full extent requested by Petitioners. Playland is shown as taxable upon the 2022 final assessment roll. The assessment of the County's property upon said assessment roll is $3,299,383. The assessment as it appears on the 2002 assessment roll is unlawful because Playland is required to be exempt from real property taxation pursuant to the provisions of RPTL § 406.

The Petition requests that the Respondents annul and set aside the 2022 final assessment, restore the tax exemption and the property to the wholly exempt portion of the assessment roll, reduce the 2022 assessment on Playland to a proper amount and refund to Petitioners all unlawfully assessed taxes paid.

On March 31, 2023, Respondents filed a Verified Answer. In their Answer, Respondents admit that the County is the deeded owner of Playland and that the tax exemption was revoked. The Answer contains defenses and objections in point of law. Respondents assert in their first defense and objection in point of law that Petitioners do not have a pecuniary interest and standing to challenge the tax assessment since they have failed to pay the taxes due. Respondents claim in the second defense and objection in point of law that Standard Amusements is the beneficial owner of Playland and as a private, for-profit entity, it is not entitled to an exemption under RPTL § 406(1). In their third defense and objection in point of law, Respondents assert that Petitioners illegally alienated parkland in violation of the Public Trust Doctrine when they entered into the Management Agreement. The fourth defense and objection in point of law states that the County should be estopped from challenging the Playland tax exemption revocation since the Management Agreement transferred ownership to Standard Amusements. Last, the fifth defense and objection in point of law states that petitioners did not meet their burden of proving entitlement to the reief sought in their Complaint on Real Property Assessment before the BAR.

The Instant Motion and the Parties' Contentions

Prior to the joinder of issue, on November 18, 2022, Petitioners filed the instant motion for summary judgment seeking the relief indicated above.

In their motion, Petitioners argue, inter alia, that Respondent Assessor determined, without basis, that Playland would no longer be classified as exempt due to Standard Amusement's management of the property. Petitioners assert that the governing statute, RPTL §406 (1), provides that an exemption should be permitted when the property is available and employed for the benefit of the general public notwithstanding that private entities manage, operate, or directly benefit from the property. Petitioners state that Playland continues to be used and enjoyed by the general public in the same manner as when it was operated by the County and that Standard Amusements is contractually bound to operate Playland as a "public park facility" open to the general public consistent with Playland's historic recreational use. In support of their position, Petitioners cite to provisions in the Management Agreement that ensure that Standard Amusements will continue operating Playland as a public park. Petitioners contend

that Standard Amusements does not have exclusive control of Playland's operations, since the County retains authority over certain aspects of Playland. Petitioners argue that the County's ownership of Playland and use of Playland did not change in any manner nothwithstanding the Management Agreement.

Petitioners posit that Respondents have failed to meet their burden to show the propriety of the revocation of tax-exempt status and there are no genuine issues of material fact. Therefore, they claim entitlement to summary judgment as a matter of law. Petitioners complain since Respondents revoked Playland's tax-exempt status in knowing contravention of existing law, they should be subject to sanctions for frivolous conduct.

In opposition, Respondents argue, inter alia, that the Management Agreement has transferred beneficial ownership of Playland to Standard Amusements which exercises dominion and control of Playland. Respondents claim that since Standard Amusements is a for-profit entity, Playland is not entitled to a tax exemption under the applicable statute. Respondents assert that Petitioners' motion must be denied and the proceeding dismissed because Petitioners have not paid the real property taxes on Playland. Respondents further claim that Petitioners acted ultra vires by violating the Public Trust Doctrine when they entered into the Management Agreement. More specifically, Respondents claim that the Management Agreement violates Chapter 826 of the laws of 1940, by which the New York State legislature specifically created the "Playland Authority Act" and prohibits contracts, leases or concessions regarding Playland for a period of longer than five years. Respondents argue that since the Management Agreement is for a thirty-year term, it was entered into in clear violation of the statutory authority and is ultra vires. Respondents also argue that an act of the Legistlature was required to enter into the Management Agreement because of the doctrine that land held for park purposes is a public trust and that the alienation of the land, or dedication to another use, requires an act of the legislature. Respondents point out that such legistlation was obtained in 2003 when the County wished to enter into a long-term lease agreement with the Westchester Children's Museum on a portion of Playland. Respondents further claim that the Management Agreement is "effectively" a lease and constituted the unlawful alienation of parkland absent special enabling legislation authorizing same.

In reply, Petitioners counter, inter alia, that Respondents' opposition is based on the incorrect assumption that the Management Agreement is a lease. Petitioners claim that Respondents' argument regarding the alienation of parkland is a "red herring" because they did not assert a counterclaim to that effect in their answer or initiate a proceeding to invalidate the Management Agreement. Therefore, Petitioners assert that the validity of the Management Agreement is not an appropriate inquiry in the context of an Article 7 proceeding. Petitioners add that any defenses or objections included in Respondents' Answer should not be considered since it was untimely. They point out that the Answer containing defenses and objections in point of law was filed on March 31, 2023, but it was originally due on November 7, 2022.

Petitioners state that in 2013, Supreme Court, Westchester County, addressed a challenge to a management agreement between the non-profit Sustainable Playland, Inc. ("SPI") and the

County for the operation of Playland. Petitioners have provided a copy of the Decision, Order and Judgment in that matter (*In The Matter of Kenneth Jenkins v Robert P. Astorino*, Sup Ct, Westchester County, December 23, 2013, Zambelli, J., index No. 13-2443). In that action, the Chair of the Board of Legislators of the County filed a proceeding to annul a resolution that permitted the County to enter into an "asset management agreement" with SPI to manage, operate, repair, maintain, make improvements to, and bear financial responsibility for all costs and liabilities for Playland. There, the Chair argued that the agreement at issue was a lease or, alternatively, a license instead of a management agreement. However, the Court found that the subject agreement was neither a lease nor a license. Petitioners argue that the decision in *Jenkins* is a precedent for the instant matter.

Respondents filed a sur-reply affirmation in further opposition to the motion and have provided copies of the papers considered by the Court in the *Jenkins* case.

Analysis

Respondents argue that Petitioners lack standing to challenge the tax assessment because they have not paid the real estate taxes on Playland. Respondents are correct that "one challenging a tax assessment must continue to pay his [or her] taxes and that the commencement of an assessment review proceeding does not stay the collection of taxes or enforcement procedures instituted by the taxing authority" (*Grant Co. v Srogi*, 52 NY2d 496, 515-516 [1981]). This is so even for public entities such as the State of New York, which must timely pay their local real property taxes as assessed, notwithstanding the pendency of an Article 7 tax certiorari proceeding (*Matter of Fulton v State of New York*, 76 NY2d 675 [1990]).

However, there is no authority for Respondents' claim that the payment of taxes under the circumstances present here is a condition precedent to the commencement of the proceeding. This argument is wholly without merit. Petitioners could not have paid the taxes prior to the commencement of the proceeding since the first tax bill did not become due and owing until more than four months later, on February 28, 2023. Had Respondents timely and promptly pursued the defense of this proceeding, they would not have had an opportunity to raise the non-payment of taxes as an issue. Although the Notice of Petition and Petition and accompanying papers were filed on October 13, 2022 and Respondents were served on October 17, 2022, Respondents waited to file their answer, originally due on November 7, 2022, until March 31, 2023. The summary judgment motion, originally returnable on December 12, 2022 was also adjourned to accommodate Respondents. Certainly, it would be unjust and prejudicial to allow Respondents' delay to thwart the right of Petitioners to be heard on their challenge to the tax assessment.

Moreover, the case law does not support Respondents' claim that the payment of taxes is a condition precedent to the commencement of the proceeding. The case of *Morris Investors, Inc. v Commissioner of Fin.*, 69 NY2d 933 [1987], cited by Respondents, is distinguishable. *Morris* involved a transfer tax payable pursuant to the New York City Administrative Code which contained an explicit requirement in the code that the taxpayer either deposit the tax with

the City's Director of Finance or file an undertaking for the same amount. Here, there is no such requirement in the RPTL. Moreover, the Court of Appeals in *Morris* made it clear that it did not agree "that the failure to deposit the tax or post a bond within four months is a condition precent that nullifies the underlying right to bring an action" (*Morris* at 936; citations omitted).

Similarly, the cases cited by Respondents in support of the claim that the proceeding should be dismissed are not persuasive. Instead, the cases are inapposite to Respondents' position that the proceeding should be dismissed outright. For example, in *Grant*, *supra*, the issue before the Court of Appeals was whether the taxpayer was entitled to an injunction against the municipality during the pendency of an Article 7 proceeding. In *Welch Foods, Inc. v Wilson*, 262 AD2d 949 [4th Dept 1999], while the Court held that dismissal was warranted, it issued a conditional order of dismissal, dismissing the proceeding unless the taxpayer paid the contested sewer rents within ninety days. It must be noted that in *Welch*, the municipality made a motion to dismiss. Here, there is no such motion before this Court. Instead, Respondent City has recently commenced an Article 78 proceeding against Petitioners seeking an order for Respondents to pay the taxes due (*City of Rye v County of Westchester et al*, Sup Ct, Westchester County, index No. 66087/2023).

It has long been established that the law "relating to review of assessments is remedial in character and should be liberally construed to the end that the taxpayer's right to have [its] assessment reviewed should not be defeated by a technicality" *(People ex rel. New York City Omnibus Corp. v Miller*, 282 NY 5, 9 [1939]). Here, the issue of the payment of taxes is a technicality which should not prevent this proceeding from going forward.

Petitioners are aggrieved under RPTL § 704, since the tax assessment at issue has a direct adverse effect on their pecuniary interest (*see Matter of Waldbaum, Inc. v Finance Adm'r of City of N.Y.*, 74 NY2d 128 [1989]). Therefore, Petitioners have standing. In any event, as discussed below, since Playland was acquired and maintained as parkland for a public use, any subsequent tax lien on the property is considered void ab initio (*Town of Hempstead v AJM Capital II, LLC*, 183 AD3d 550, 551 [2d Dept 2020]).

Turning to the merits of the motion, it is well settled that the proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (*see Winegrad v N.Y. Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers *(see Winegrad v N.Y. Univ. Med. Ctr.*, 64 NY2d at 853).

"Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" *(Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *see Zuckerman v City of New York*, 49 NY2d at 562). Mere conclusions, expressions of hope or unsubstantiated allegations or assertions are

insufficient to defeat a prima facie showing of entitlement to summary judgment (*see Zuckerman v New York*, 49 NY2d at 562). Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue (*Pizzo-Juliano v Southside Hosp.*, 129 AD3d 695 [2d Dept 2015], quoting *Andre v Pomeroy*, 35 NY2d 361 [1974]; *William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470 [2013]).

These standards apply in a proceeding pursuant to Article 7 of the RPTL. Summary judgment is properly granted when there is no genuine issue of material fact and the petitioner can show by substantial evidence that the assessment is excessive, illegal or unequal and tenders evidence in admissible form sufficient to warrant the court directing judgment in its favor as a matter of law (*see Matter of Trustees of Sailors' Snug Harbor in City of N.Y. v Tax Commn. of City of N.Y.*, 26 NY2d 444, 449 [1970]); *Fusco v Assessor of City of Utica*, 178 AD2d 995, 995 [4th Dept 1991].

Generally, the burden of proof that a property is entitled to a tax exemption rests with the taxpayer *(see Merry-Go-Round Playhouse, Inc. v Assessor of City of Auburn*, 24 NY3d 362 [2014]). However, where as here, a municipality seeks to revoke an exemption previously granted, it is the municipality that has the burden of establishing that the property is no longer exempt from taxation (*see Matter of Greater Jamaica Dev. Corp. v New York City Tax Commn.*, 25 NY3d 614 [2015]; *New York Botanical Garden v Assessors of Washington*, 55 NY2d 328, [1982]; *Watchtower Bible & Tract Soc. v Lewisohn*, 35 NY2d 92 [1974]).

In the instant matter, Respondents bear the burden of demonstrating that Playland is no longer exempt from taxation pursuant to RPTL § 406(1) which provides as follows:

> "(1) Real property owned by a municipal corporation within its corporate limits held for a public use shall be exempt from taxation and exempt from special ad valorem levies and special assessments to the extent provided in section four hundred ninety of this chapter (RPTL § 406[1])."

While there is no dispute that Playland is located within the County and thus meets the second requirement contained in RPTL § 406 (1) that the subject property is within the County's corporate limits, Respondents argue that Playland does not meet the other two requirements set forth in the statute.

First, they contend that Playland is no longer owned by the County and that Standard Amusements is the "beneficial owner" of Playland because it has entered into the Management Agreement with Standard Amusements. This argument conveniently distorts the plain language of the Management Agreement. The Management Agreement describes in detail the relationship between the County, as owner, and Standard Amusements, as manager of Playland.

The Management Agreement makes it clear that there is no transfer of ownership by announcing that "[u]nder no circumstances shall this Agreement be construed as granting the Manager, or its approved subcontractors, any real property rights, nor any title or interest of any

kind or character in, on, or about Playland Park" (Section 33). Rather, pursuant to the Management Agreement, as manager, Standard Amusements "shall manage, operate, improve, maintain and repair Playland Park in accordance with standard industry practices..." (Section 2 [A]).

There are numerous provisions in the Management Agreement requiring Standard Amusements to account or report to the County. These provisions ensure that the County maintains control over Playland's operations. For example, Standard Amusements must submit annual operating plans to the County Department of Parks, Recreation & Conservation which must include "a set of written Rules and Regulations governing public use of and behavior in Playland Park, including, but not limited to, visitor conduct, public hours and rules to ensure the well-being and safety of the public, the enjoyment of Playland Park by the public for its intended purposes, and the safe and efficient conduct of activities in Playland Park" (Section 5). Standard Amusement is required to hold annual meetings with the County to discuss Standard Amusements' marketing plan for Playland, which must take into account "accessibility, affordability, and attractiveness of Playland to all citizens of Westchester County, including, in particular, less economically advantaged segments of the population" (Section 1[B]). Standard Amusements must provide to a special committee as designated by the Chairman of the Board of Legislators of the County quarterly financial information, monthly operating statistics relating to attendance levels and revenue at Playland Park within thirty days of the end of each such month. Standard Amusements must also attend quarterly meetings with County personnel (Section 2 [0]). The County also sees that the Petitioner Standard Amusements is meeting applicable standards of maintenance of amusement parks (Section 2[V]); reviews and approves certain material improvements by Standard Amusements, which includes providing feedback on concept drawings as well as reviewing and commenting on plans and specifications (Section 6[B]); retains the naming rights of Playland Park (Section 9[C]); and has auditing responsibilities on Standard Amusements' investment expenditures and Standard Amusements' performance (18[A] and [B]).

The Management Agreement also sets forth the County's duties as owner of Playland and states that "[a]s owner of Playland Park [the County] shall remain responsible for extraordinary maintenance, repairs and improvements, which are those that occur infrequently, are substantial and increase the economic life of the asset" (Section 2-a). The County has access to all of Playland at all reasonable times during the term of the Management Agreement (Section 2[B]). The County is obligated under the Management Agreement to provide services such as bus service to Playland (Section 2[K]) and to maintain the County's website, playlandpark.org (Section 2[T]). Although Standard Amusements bears the cost, the County continues to provide police and park ranger staffing services through the Westchester County Department of Public Safety at the same level of staffing that was in place during 2019 (Section 2 [H]).

The financial relationship between the County and Standard Amusements is highly relevant to the issue of ownership. Standard Amusements must share the revenue generated by Playland with the County (Section 3[C]). If the gross revenue fails to achieve a certain target for four consecutive years, the County may terminate the Management Agreement. Section 3(G) of

the Management Agreement also states that "[it] is the County's position that Playland Park and operations by the Manager at Playland are not subject to property taxes."

While Respondents argue that Standard Amusements may also be seen as a lessee, the Management Agreement states as follows:

> "SECTION 33: No Lease.
>
> Neither Playland Park, nor any land, building, space, improvement or equipment is being sold or leased hereunder, nor is any interest in real property being granted, or any possessory right with respect to Playland Park or any part thereof being granted, to the Manager and/or its approved subcontractors; but the Manager shall manage and operate Playland Park at all times on behalf of the County..."

Respondents cite to *ACF Industries, Inc. v Board of Assessors of the City of Buffalo*, 13 AD2d 154 [4th Dept 1961], *affd* 14 NY2d 539 [1964] in support of their position that Standard Amusements has beneficial ownership of Playland. However, their reliance on *ACF Industries* is misplaced. In *ACF Industries*, the question presented was whether a building erected by a private corporation pursuant to a contract with the Atomic Energy Commission, an agency of the United States, was immune from real estate taxation by the City of Buffalo. The Court held that the United States Government through the Atomic Energy Commission was the beneficial owner of the property and the building was therefore immune to taxation. The Court reasoned that the practical ownership of the property rather than the naked legal title dictated the result. In the instant matter, the County has legal title as well as practical ownership of Playland. It simply has hired Standard Amusements to manage it for the County.

Taxable interest is justified when one exercises dominion and control over the property (*see In the Matter of Metromedia, Inc. v Tax Commission of the City of New York, Inc.*, 60 NY2d 85 [1983]). Here, the County has retained dominion and control over Playland (*see United Health Services Hospital v Assessor of the Town of Vestal*, 122 AD3d 1177[3d Dept 2014], *leave denied*, 25 NY3d 909 [2015]). Therefore, while the Management Agreement gives Standard Amusements broad authority to manage Playland, it is clear that it did not effectively transfer beneficial ownership of Playland to Standard Amusements nor did it create a lease (*see Union Sq. Park Community Coalition, Inc. v New York City Department of Parks and Recreation*, 22 NY3d 648, 659 [2014]).

Playland also meets the third test contained in RPTL § 406(1) since it is held for public use notwithstanding Respondents' disingenuous claim to the contrary. "Although what comprises 'a public use' within the meaning of the statute 'has never been defined with exactitude' and 'must necessarily depend upon the peculiar circumstances of each case, it has been said... that '[h]eld for a public use, in this connection, 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'" (*Town of*

Harrison v County of Westchester, 13 NY2d 258, 263 [1963], quoting *County of Herkimer v Village of Herkimer*, 251 AD 126, 128 [4th Dept 1937], *affd* 279 NY 560 [1939]; *see Matter of County Tennis Club of Westchester v Office of Assessor for Vil. of Scarsdale*, 261 AD2d 616, 617 [2d Dept 1999]; *Matter of County of Erie v Kerr*, 49 AD2d 174, 178–179 [4th Dept 1975], *lv. denied* 38 NY2d 711 [1976]). The definition of public use has been broadly defined by Courts defining the term as encompassing virtually any project that may further the public benefit, utility, or advantage (*see Vitucci v. New York City School Const. Auth.*, 289 AD2d 479 [2d Dept 2001]).

In *Town of Harrison v County of Westchester*, 13 NY2d 258 [1963], the Court of Appeals held that portions of a county-owned airport, consisting of airport hangars and land leased to private parties, were not exempt from taxation as property held for public use, where the private corporations, either as lessees or sub-lessees under long-term leases exercised complete exclusive dominion over premises. The Court clearly distinguished between these hangers and other hangers at the Westchester County Airport, which were leased to a private company for the operation of the airport as a public airport and for the benefit of the "general use of its inhabitants" (*Town of Harrison* at 263). The Court noted that the subject hangars were not utilized for any other purpose redounding to the benefit or advantage of the general community and instead serviced the private aircraft of their corporate occupants.

Even when property is leased to a private, for-profit provider of services, the inquiry is whether the services are available to the public (*see Matter of Panorama Flight Services Inc. v Town of Harrison,* 25 Misc3d 1201(A) [Sup. Ct.,Westchester County, Sept. 17, 2009]). 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 (*County of Erie v Kerr*, 49 AD2d 174, 179 [4th Dept 1975], *appeal denied* 38 NY2d 711 [1976]). In C*ounty of Erie*, the court held that a county-owned sports stadium, which had been leased to a private operating corporation, was devoted to a public use where the stadium was being "employed in furtherance of the exact purpose for which it was contemplated, i. e., to provide the residents of Erie County the benefit of a first-class recreational, sports and cultural facility" (*County of Erie, supra* at 180). In *Dubbs v Board of Assessment Review*, 81 Misc2d 591 [Sup. Ct. Nassau County, Mar. 19, 1975]), the Court held that an indoor arena operated by private entities and held for the public use was tax-exempt.

In *Fallica v Town of Brookhaven*, 69 AD2d 579 [2d Dept 1979], Justice Lazer issued a dissenting opinion which discussed the rationale of *Erie* and *Dubbs, supra*. He disagreed with the majority decision that town-owned property leased to the federal government was not exempt pursuant to RPTL § 406(1). Justice Lazer wrote as follows:

> "In both *Matter of County of Erie v Kerr* (citations omitted) [Rich Stadium] and *Matter of Dubbs v Board of Assessment Review of County of Nassau* (citations omitted) [Nassau Veterans Memorial Coliseum], municipal facilities leased to private commercial interests for the showing of major league sporting contests, cultural events, public exhibitions and the like were declared to be held for public

> use despite the fact that the primary beneficiaries were the owners of major league sports franchises. Nevertheless, the rationale of *Erie* and *Dubbs* is not difficult to accept — the uses involved provided a means of meeting the recreational needs of the residents of the locality whose facilities were utilized and thus the benefit flowed to those who carried the tax burden" (*Fallica v Town of Brookhaven*, 69 AD2d 579, 602-03 [2d Dept 1979].

The Court of Appeals subsequently reversed the Appellate Division on the basis of Justice Lazer's opinion (*Fallica v Town of Brookhaven*, 52 NY2d 794 [1980]).

Here, as in *Erie* and *Dubbs*, while Respondents make much of the Management Agreement, the focus is whether access is still afforded to the general public and whether Playland is being operated for a public use. "Neither the method chosen by the municipal corporation for the operation of the facility at issue nor the fact that the municipal corporation receives much need revenue for the operation of such facility is determinative" (*County of Clinton v Drollette,* 6 AD3d 968, 970 [3d Dept 2004] *lv denied* 3 NY3d 606 [2004] [county landfill continued to serve a "public use" after it was privatized and leased to private corporation]; *see also*, *Matter of Spectapark Assoc. v City of Albany Dept. of Assessment and Taxation,* 12 AD3d 800 [3d Dept 2004], *appeal denied* 4 NY3d 705 [2005] [tax exemption granted for parking garage used for public use, located to access an arena also used for public use]. Moreover, restrictions placed on the use of or public access to the property do not strip the property of its tax-exempt character which requires that it be "open to and enjoyed by the public", as long as the restrictions imposed are not inconsistent with the public purpose for which the property is being used (*see Matter of New York Botanical Garden v Assessors of Town of Washington,* 55 NY2d 328, 336-337 [1982]).

Playland, including the amusement rides, entertainment and other activities at Playland, is for public use despite the fact that the primary beneficiary may be Standard Amusements. The management of Playland by Standard Amusements provides a means of meeting the recreational needs of the residents of Westchester County. The terms of the Management Agreement ensure that Playland continues to operate for the public good. For example, it explicitly states that Standard Amusements recognizes and understands that it must manage and operate Playland consistent with the park's recreational uses and as a public park facility (Section 2[A]). Standard Amusements must guarantee that the public has free access to the Edith G. Read Natural Wildlife Park and Sanctuary, the boardwalk and pier, and to the beach (Section 2[C]). Standard Amusements must keep all non-gated public spaces at Playland maintained and open to the public, for certain hours off-season and in-season, including the main parking lot, beach/pool parking lot, fountain plaza, main boardwalk, picnic area and pier. The public and their dogs may enjoy the beach off-season with off-leash dogs (Section 2[C]). Therefore, since Playland is for public use, it is entitled to maintain its tax exempt status.

This Court need not address Respondents' contention that the Management Agreement constitutes an alienation of parkland in violation of the Public Trust Doctrine or that special enabling legislation was required to authorize the County to enter into the Management

Agreement prior to doing so. These issues are not properly before this Court. A proceeding under Article 7 of the RPTL is limited to determining whether the assessment to be reviewed is excessive, unequal or unlawful, or that real property is misclassified pursuant to RPTL § 706. And, as correctly pointed out by Petitioners, assuming this Court held that the Management Agreement was somehow improper and invalid, management of Playland would necessarily revert back to the County and render Respondents' arguments moot.

In view of the foregoing, Petitioners have made a prima facie showing of entitlement to judgment as a matter of law (*see Winegrad v N.Y. Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Respondents have failed to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" *(Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *see Zuckerman v City of New York*, 49 NY2d at 562). Petitioners have proven that Playland is entitled to a tax exemption pursuant to RPTL § 406 (1) and Respondents have failed to establish that Playland is no longer exempt from taxation (*see Matter of Greater Jamaica Dev. Corp. v New York City Tax Commn.*, 25 NY3d 614 [2015]; *New York Botanical Garden v Assessors of Washington*, 55 NY2d 328, [1982]; *Watchtower Bible & Tract Soc. v Lewisohn*, 35 NY2d 92 [1974]).

However, this Court declines to grant Petitioners' request for sanctions. Frivolous conduct is not indicated in this matter (*see Kernisan v Taylor*, 171 AD2d 869 [2d Dept 1991]).

All other arguments raised on this motion and evidence submitted by the parties in connection thereto, have been considered by this court, notwithstanding the specific absence of reference thereto.

Accordingly, based upon the forgoing, and upon the papers herein, the Court having determined that no testimony is necessary to resolve the issues herein (*see* RPTL § 720 [2]), it is hereby

ORDERED that the Verified Petition is GRANTED, in part, and the 2022 assessment of Petitioners' real property known as Playland Park located in the City of Rye, New York, County of Westchester, and designated on the Tax Map of the City of Rye as Section 146-20, Block 1, Lot 6-2, as taxable by Respondents was unlawful; and it is further

ORDERED that Petitioners' motion for summary judgment is granted to the extent that Respondents are directed to restore the tax exemption on Petitioners' real property known as Playland Park located in the City of Rye, New York, County of Westchester, and designated on the Tax Map of the City of Rye as Section 146-20, Block 1, Lot 6-2, pursuant to Section § 406(1) of the Real Property Tax Law and return the assessment on said property to the wholly exempt portion of the 2022 assessment roll, within five (5) days of entry of this Order; and it is further

ORDERED that any overpayment of taxes by Petitioners resulting from Respondents'

unlawful revocation of the tax exemption on Petitioners' real property shall be refunded, with statutory interest, within ten (10) days of entry of this Order; and it is further

ORDERED, that Petitioners shall serve a copy of this order with Notice of Entry upon all parties within five (5) days of entry.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
September 26, 2023

HON. ANNE E. MINIHAN
Justice of the Supreme Court

To:

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