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TAX COURT OF NEW JERSEY
DOCKET NOS. 015412-2013
006364-2014

Corrected first page – added plaintiff attorney 2/22/16.

NEW JERSEY TURNPIKE AUTHORITY,	
Plaintiff,	
v.	
TOWNSHIP OF MONROE,	
Defendant.	

Approved for Publication
In the New Jersey
Tax Court Reports

Decided: February 22, 2016

Louis N. Rainone and Megan E. Sassaman for plaintiff
(DeCotiis, Fitzpatrick & Cole, L.L.P., attorneys).

Richard A. Rafanello and Gregory B. Pasquale for defendant
(Shain, Schaffer & Rafanello, P.C., attorneys).

SUNDAR, J.T.C.

This is the court's decision regarding plaintiff's summary judgment motion in connection with its complaints for tax years 2013 and 2014 whereby plaintiff (the "Turnpike") challenged the local property tax assessments imposed upon property it owns, identified as Block 6, Lots 6, 7, 10, 11.01; Block 7 Lots 1, 2 (collectively the "Subject") and located in defendant municipality ("Township"). The Turnpike maintains that the Subject is tax exempt both under its enabling statute, N.J.S.A. 27:23-12, as well as the local property tax law, N.J.S.A. 54:4-3.3b. Although it did not file an appeal or include tax year 2012 in its present complaints, it seeks an exemption for that year on grounds that the Township's assessor had granted an exemption for tax year 2011.

*

The Township argues that (1) the assessments are proper because the Subject was purchased to satisfy the Turnpike's obligation to the New Jersey Department of Environmental Protection ("NJDEP") as mitigation for the loss of environmentally protected lands, therefore, was not being used for a transportation project as required by N.J.S.A. 27:23-12; and, (2) summary judgment is inappropriate since facts are needed to establish whether the Turnpike actually donated all of the acquired lands to the NJDEP. The Township cross-moved for summary judgment on grounds that the Turnpike's tax exemption claim for 2012 is time-barred.

For the reasons stated below, the court finds that the Turnpike is entitled to a tax exemption for tax years 2013 and 2014. The court lacks subject matter jurisdiction over tax year 2012. Therefore, each party's summary judgment motion is granted in part. The Township's counterclaims for 2013 and 2014 are dismissed with prejudice.

FACTS

A. The Turnpike Project

The undisputed facts are as follows. The Turnpike is established in the New Jersey Department of Transportation, as a "body corporate and politic with corporate succession." N.J.S.A. 27:23-3. It is "an instrumentality, exercising public and essential governmental functions." Ibid.

The Turnpike is involved in a project to widen and reconfigure a portion of the highway from interchange 6 to interchange 9 ("Widening Project") for purposes of improving traffic, increasing safety and reducing motor vehicle congestion. The Widening Project also includes other improvements to the interchanges and service areas, such as construction of ramps and relocation of a toll plaza, utility lines and major pipelines.

The Widening Project would temporarily or permanently impact certain environmentally protected areas adjacent to, and in the vicinity of the interchanges. Consequently, the Turnpike had to obtain permission from the NJDEP to continue with the Widening Project. It did so by applying for, among others, a Freshwater Wetlands ("FWW") permit as well as a Flood Hazard Area ("FHA") permit from the NJDEP.

The NJDEP issued two approvals for the permits, one on April 27, 2009 for a five-year term ("2009 Approval") and one on April 30, 2010 for five-year and ten-year terms ("2010 Approval"). The 2009 Approval described the Widening Project as "permanently" impacting a total of 327.4 acres of wetlands, wetland transition areas, open waters and riparian zones, and as temporarily impacting a total of 55.4 acres of wetlands, wetland transition areas, and riparian zones, for a grand total of 382.8 acres. Additionally, about 93 acres of wetland/transition areas which were of a "vernal habitat**,**" would be potentially impacted.

The 2009 Approval imposed, among others, "Mitigation conditions for impacts to regulated areas." As to freshwater wetlands, the Turnpike was required to "mitigate for permanent impact to 120.3 acres of freshwater wetlands, 2.1 acres of State open waters . . . to 3.7 acres of freshwater wetlands," and for "the temporary impact to 14.2 acres of freshwater wetlands."[1] Such mitigation was to be done "prior to or concurrent with the construction of the permitted wetland/State open water disturbance." If the Turnpike proposed to mitigate by creating or restoring wetlands, the ratio was 2:1 (i.e., two acres to be created or restored for each acre disturbed), plus standard transition area. This would amount to 280.6 acres, plus standard transition area. If the Turnpike proposed to mitigate by constructing wetland enhancement

[1] The impacted acreage and areas were based on the "approved impact summary chart" and plans submitted to the NJDEP on behalf of the Turnpike.

projects, then "the ratio of wetlands enhanced to wetlands disturbed" was to be "sufficient enough to replace the loss of ecological value from the permitted disturbance." See N.J.A.C. 7:7A-15.8. The minimum ratio was 3:1.[2] At this ratio, the lands required for mitigation would be 420.9 acres. The Turnpike was also required to replace 27.5 acres of wetland ditches/swales at a 1:1 ratio.

The mitigation for the permanent impact to 80.8 total acres of riparian zones was to be "at a ratio of at least 2:1." For the 19.510 acres of the temporarily impacted riparian zones, the mitigation was required at a ratio of 1:1. Thus, the Turnpike would be required to mitigate with 181.11 acres for the Widening Project's impact to riparian zones.

The mitigation for vernal habitats (wetland/transition areas) could be by either on-site or off-site creation, restoration, enhancement or preservation or through purchase of mitigation "credits." If the Turnpike proposed to mitigate by creation, restoration or preservation, then it would have to be of an "equal ecological value," which was at a 2:1 ratio for both wetlands and non-wetlands, with a minimum of 50-150 foot transition area. If mitigation was to be by enhancement, then the ratio of wetlands mitigated to wetlands disturbed was 27:1, plus upland.

The NJDEP identified several potential "wetland, riparian zone and vernal habitat" mitigation sites. One such site was the "Brookland Mitigation Site" (the Subject),[3] which would "enhance 81.34 acres of wetlands and preserve a 271-acre wetland-denominated forested complex" and would mitigate "37.1 acres of wetland impacts," and "some portion of riparian zone . . . impacts."[4] The NJDEP wetlands map showed that a significant portion of the 397.47 acres,

[2] The NJDEP's website notes that "enhancement ratios for wetlands range from 3:1 to 10:1 or more, depending upon the ecological benefit" to be provided. An "applicant" could be required "to enhance as little as 3 or as many as 10 or more acres of wetlands." See http://www.nj.gov./dep/landuse/mitigate.html (last visited January 19, 2016).
[3] The Subject was owned by Brookland Company, G.P., and measured approximately 397.47 acres.
[4] The 2009 Approval noted that the Turnpike proposed to purchase 11.44 credits from the "Rancocas Creek Wetland Mitigation Bank." There is nothing to show that this purchase occurred.

was encumbered with wetlands and wetland buffers. About 115.9 acres were limited-access uplands.

The 2010 Approval authorized further disturbances, temporary (totaling 12.798 acres) and permanent (6.168 acres), which were of grassed, herbaceous, and forested riparian zones. The Turnpike was required to compensate for the temporary impact to 10.89 acres at a 1:1 ratio, and at a 2:1 ratio for the additional permanent impact to 3.14 acres. While the Turnpike was also required to mitigate for the additional 1.898 acres temporarily impacted and 3.028 acres permanently impacted, the 2010 Approval did not specify the method of mitigation. The 2010 Approval also noted that pursuant to a "Vernal Habitat Impacts Report" submitted by the Turnpike post-2009 Approval, 14.192 acres of wetland area would be impacted by two sections of the Widening Project alone, resulting in "quantified impacts for the entire [Widening P]roject . . . to be a minimum of 15.558 acres" as of April 2010. The Turnpike was required to submit a revised Vernal Habitat Impacts Report for the entire Widening Project including additional habitats identified through the Spring of 2010, to serve as a "running assessment" of the vernal habitats impacted by the Widening Project and of the "required mitigation responsibilities." The total acres thus required by mitigation was 34.654 acres at a minimum.[5] This was in addition to what was required by the 2009 Approval.

In a June 30, 2009 meeting, the Turnpike's Board approved acquisition of the Subject, plus two landlocked lots in between (Block 6, Lots 8 and 9 owned by two other individuals).[6] The minutes of the meeting noted that the Widening Project was in its final design phase, which included "environmental permitting" due to the Widening Project's impact on wetlands adjacent to the Turnpike and in the vicinity of certain interchanges. Based on recommendations from its

[5] (10.89 + (3.14 x 2) + 3.028 + 1.898 + 15.558).
[6] The minutes referenced the acquisition as "takings of vacant parcels."

environmental consultant, and also because the Subject plus the two lots were "necessary for the Widening Pro[ject]," the Turnpike had negotiated a purchase of the same with the property owners.

By letter of August 27, 2009, the NJDEP wrote to the New Jersey Wetlands Mitigation Council ("Council") recommending the Turnpike's August 18, 2009 proposed land donation of the Subject plus the two other lots.[7] The letter noted that per the 2009 Approval, the proposed impact was to 119 acres of wetlands, the proposed land donation was of 258 acres (146.5 wetlands+111.5 acres upland), resulting in a "27:1 ratio of lands preserved to lands impacted," and that the donation was "part of a larger wetland mitigation proposal" which included "purchase of wetland mitigation bank credits and the creation and enhancement of wetlands."

On January 11, 2010, the Turnpike purchased the Subject "in lieu of condemnation." The deed was recorded February 23, 2010 in Middlesex County Clerk's Office.

In August 2012, the Turnpike contracted with a third party for construction of "one freshwater wetland and riparian zone mitigation site" on the "400 plus acres." The contract was identified as "Interchange 6 to 9 Widening Program, Brookland Mitigation Site." The work included earthwork, grading, seeding, herbaceous wetland planting, creation of vernal pool and wood turtle habitats, stream corridor mitigation, and reforestation, among others, clearing of 139 acres, which "will provide 42.7 acre-credits of wetland mitigation, 48.4 acre-credits of riparian zone mitigation, 6.1 acres of vernal pool habitat mitigation and 4.7 acres of wood turtle habitat mitigation."

[7] The Council is an executive body "established under N.J.S.A. 13:9B-14 to perform the functions enumerated at N.J.S.A. 13:9B-15" and "administers the Wetlands Mitigation Fund." N.J.A.C. 7:7A-15.1. If land is proposed to be donated to satisfy mitigation obligations, the NJDEP must first allow this method, after which the Council must approve the donation. N.J.A.C. 7:7A-15.22(a). Such approval is to be given "only if the amount of land to be donated is sufficient to ensure that the functions and values provided by the donated land will fully compensate for the loss of functions and values caused by the disturbance." N.J.A.C. 7:7A-15.22(b).

The Subject remains titled to the Turnpike. In five years, the NJDEP will acquire a permanent easement pursuant to the 2009 Approval and 2010 Approval whereby the Turnpike had to file a conservation restriction for any "approved mitigation project," involving mitigation of a permanently impacted area and in some cases, of a temporarily impacted area. See N.J.A.C. 7:7A-15.14.[8]

B. Local Property Tax Assessment

Pursuant to N.J.S.A. 54:4-3.3b, any real property acquired by an "authority created by the State," whether "by purchase, condemnation or otherwise," is exempt from local property tax as of "January 1 of the calendar year next following the date of acquisition." The exemption is conditioned upon the authority providing "written notice of the acquisition by certified mail" to the assessor "on or before January 10 of said calendar year next following." Ibid.

In accordance with this statute, on February 2, 2010, the Turnpike provided written letter notice, sent by certified mail, of its acquisition and ownership of the Subject to the Township's assessor and Tax Collector. The letter quoted N.J.S.A. 54:4-3.3b and asked these officials to "reflect' the Subject as "exempt" on the Township's records "at the end of the current tax year." Thereafter, the Township provided a tax exemption to the Subject for tax year 2011.

For tax years 2012 onwards, the Township placed the Subject back on its tax rolls, thereby removing the exemption. No reason was provided. When the Turnpike received tax delinquent notices in September 2012 (for the third quarter 2012 taxes), it wrote another letter dated October 12, 2012 to the assessor and the Tax Collector reiterating the exemption under N.J.S.A. 54:4-3.3b, and requesting the Subject be placed on the tax rolls as "exempt." The letter stated that the

[8] If land is donated as an approved mitigation alternative, the mitigator must transfer the property "in fee simple to a government agency or a charitable conservancy" which must "preserve the mitigation area as a natural area in perpetuity," with such transfer and "conservation restriction or easement" to be recorded. N.J.A.C. 7:7A-15.19(c).

Turnpike had, until then, "not received an invoice for the payment of real estate taxes since it took title to" the Subject. A similar letter was sent December 20, 2013 since the Township continued to send delinquent tax notices.

The Turnpike did not appeal the 2012 assessment to any forum. It filed timely appeals to the Tax Court for tax years 2013 and 2014 asserting an exemption, and alternatively claiming that the assessments discriminated the Turnpike.[9] It did not include or reference tax year 2012 in the complaints. The Township filed a counterclaim for tax years 2013 and 2014 claiming that the assessments were below the Subject's fair market value.

ANALYSIS

A. Exemption Under N.J.S.A. 54:4-3.3b

It is undisputed that the Turnpike complied with the requirements of N.J.S.A. 54:4-3.3b. Indeed, the Township granted the Subject a tax exemption for tax year 2011 on this basis. The Township now argues that the exemption is warranted only if the Subject was being used by the Turnpike for purposes authorized by its governing statute.

There is nothing in the plain language of N.J.S.A. 54:4-3.3b which conditions a tax exemption upon a particular use of the property. Rather, the status of the owner is the focus of the statute. Cf. N.J.S.A. 54:4-3.3 (property owned by counties, school and taxing districts "used for public purposes" is exempt). See also State by Comm'r of Transp. v. Township of Pohatcong, 9 N.J. Tax 528, 540, 544 (Tax 1988), where, in the context of the propriety of imposing rollback taxes in the year of land acquisition, the court concluded from the date of acquisition "the property

[9] The Turnpike filed a similar appeal for tax year 2015. It is pending in this court but is not subject of these motions.

was tax exempt . . . because the State had complied with the statutory requisites of N.J.S.A. 54:4-3.3b," therefore "the State has no obligation to pay any local property tax after that date."

However, the Supreme Court has ruled that "tax exemption statutes, if based on the personal status of the owner rather than on the use to which the property is put, run afoul of" New Jersey's Constitutional provision that property must be "assessed for taxation under general laws and by uniform rules." New Jersey Turnpike Auth. v. Township of Washington, 16 N.J. 38, 44-45 (1954) (citing Art. VIII, §1, ¶1). Thus, vacant land "not now in the public use or presently intended for public use is taxable even when owned by bodies [such as the Turnpike] having a right to tax exemption with respect to property used for an appropriate purpose." Id. at 44. Accordingly, the "phrase" in N.J.S.A. 27:23-12, exempting real property "acquired or used" by the Turnpike from tax must be construed "in the conjunctive" in light of the constitutional mandate that all property be assessed for tax uniformly. 16 N.J. at 45. Thus, N.J.S.A. 27:23-12 should be read to apply "to property acquired for turnpike purposes and, having been so acquired, used for such purposes, or held with the present design to devote it within a reasonable length of time to such use." Ibid.

Although the above case was decided in 1954, thus much before the enactment of N.J.S.A. 54:4-3.3b (which became effective December 30, 1971), the holdings therein continue to be vital. See New Jersey Turnpike Auth. v. Township of Washington, 137 N.J. Super. 543, 547 (App. Div. 1975) (rejecting the Turnpike's argument that lands it acquired for a highway project are not subject to rollback taxes, and noting that a tax exemption would be available "[i]n future years . . . provided the requirements of N.J.S.A. 27:23-12 are met"), aff'd, 73 N.J. 180 (1977); Township of Holmdel v. New Jersey Highway Auth., 190 N.J. 74, 87 (2007) ("it is unconstitutional to award tax exemptions simply because a government agency owns the subject property").

Additionally, N.J.S.A. 54:4-3.3f provides that the tax exemption granted by N.J.S.A. 54:4-3.3b does not supersede any other provisions of law which could tax property acquired and owned by an authority of the State. This caveat means that a property acquisition that may not qualify as tax exempt under N.J.S.A. 27:23-12, would not be exempt under N.J.S.A. 54:4-3.3b.

Finally, as explained in City of Trenton v. Township of Ewing, 23 N.J. Tax 295, 298 (Tax 2006), N.J.S.A. 54:4-3.3b was enacted in response to City of East Orange v. Palmer, 47 N.J. 307 (1966), where the Supreme Court had ruled that tax exemption does not commence from the date of acquisition. Instead due to the "burden placed on the remaining taxpayers of a municipality for tax revenues lost mid-year because of" such acquisition, the State should pay the taxes for the remainder of the year of acquisition. Id. at 319. Thus, the intent of the statute was to provide the start date of tax exemption for property acquired by the State, not to overrule precedent that government acquired property is exempt due to the status of the owner.

In sum, N.J.S.A. 54:4-3.3b cannot be construed in an isolated fashion such that status of the owner controls grant of a tax exemption in disregard of the Constitution. Thus, the statute does not per se preclude or bar an assessor from denying an exemption on grounds that the property was not used for a Turnpike purpose for a later tax year.

B. Exemption Under N.J.S.A. 27:23-12

The next issue is whether the Subject's acquisition for purposes of satisfying the Turnpike's mitigation obligations to the NJDEP, is exempt under the Turnpike's enabling statute. In this connection, the Legislature deemed,

> The exercise of the powers granted by this act will be in all respects for the benefit of the people of the State, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of transportation projects and other property by the Authority will constitute the performance of essential governmental functions, the Authority shall

> not be required to pay any taxes or assessments upon any transportation project or any property acquired or used by the Authority under the provisions of this act or upon the income therefrom, and any transportation project and any property acquired or used by the Authority under the provisions of this act and the income therefrom, . . . shall be exempt from taxation. The Legislature reaffirms that all existing facilities and property, and their operations, and management, of the authority . . . , are deemed public and essential governmental functions and are exempt from local taxes or assessments.
>
> [N.J.S.A. 27:23-12 (emphasis added).]

A "transportation project" or "project" is defined as "highway projects, [and] any other transportation facilities or activities determined necessary or appropriate by the authority in its discretion to fulfill the purposes of the authority, and the costs associated therewith." N.J.S.A. 27:23-4. The term "highway projects" includes:

> the acquisition, operation, improvement, management, repair, construction, . . . , and maintenance of the New Jersey Turnpike . . . , including the demolition and removal of toll houses and toll barriers, and of . . . any other highway or feeder road at the locations and between the termini as may hereafter be established by the authority or by law and acquired or constructed under the provisions of this act by the authority, and shall include but not be limited to all bridges, parking facilities, public highways, feeder roads, tunnels, overpasses, underpasses, interchanges, traffic circles, grade separations, entrance and exit plazas, approaches, toll houses, service areas, stations and facilities, communications facilities, administration, storage and other buildings and facilities, and other structures directly or indirectly related to a transportation project, intersecting highways and bridges and feeder roads which the authority may deem necessary, desirable, or convenient in its discretion for the operation, maintenance or management, either directly or indirectly, of a transportation project, and includes any planning, design or other preparation work necessary for the execution of any highway project, and adjoining park or recreational areas and facilities, directly or indirectly related to the use of a transportation project as the authority shall find to be necessary and desirable, and the costs associated therewith.
>
> [Ibid.]

The court finds persuasive the Turnpike's argument that the acquisition of the Subject was solely for the purposes and in furtherance of the Widening Project. A Turnpike project specifically includes "any planning, design or other preparation work necessary for the execution of any

highway project." N.J.S.A. 27:23-12. It is undisputedly a part of the planning and designing the construction of a roadway (including its widening), to take into consideration environmentally protected areas which would be impacted by the same. See e.g. New Jersey Turnpike Auth. v. Township of Monroe, 2 N.J. Tax 371, 382 (Tax 1981) (environmental impact statement and "railway study" required to be undertaken prior to commencing construction, were undisputedly "turnpike purposes" under N.J.S.A. 27:23-12).

The Turnpike here, as part of its engineering and final design phase of the Widening Project, completed the environmental impact studies and plans, and obtained permits from the NJDEP. All of this was done in conjunction with, and for purposes of, the Widening Project, and based on recommendations from its environmental consultant. Because the Subject plus the two lots were "necessary for the Widening Pro[ject]," the Turnpike negotiated their purchase.

It follows that acquisition of land by the Turnpike for mitigation of environmentally sensitive areas impacted by a turnpike construction is also part of a transportation project, and indeed, a direct consequence of the same. If the NJDEP was not satisfied that the Turnpike could or would mitigate, it would not issue permits allowing the Turnpike to disturb environmentally sensitive areas. Absent such permits, the Turnpike could not continue the Widening Project without violating the law. Although the mitigation was by purchase of other environmentally sensitive land, i.e., the Subject, it does not require a conclusion that purchase of land for mitigation is not for, nor related in any manner to, a transportation project. See e.g. Township of Monroe, supra, 2 N.J. Tax at 385 (rejecting the municipality's argument that the acquired property should not be exempt "unless it is in active highway use or is part of a viable Turnpike project"). Indeed, N.J.S.A. 27:23-5.9 forbids the Turnpike to "engage in" any "acquisition . . . activity" that is "not directly or indirectly related to the use of a transportation project except as may be specially

authorized by law." Cf. also N.J.S.A. 27:23-46 (with agreement of its bondholders, the Turnpike can convey any "park or recreational areas or facilities" to the NJDEP, after which the same "shall no longer constitute part of a project").

But for the Widening Project, environmentally sensitive lands would not have been impacted. But for such impacts, the Turnpike would not have been obligated to undertake their mitigation. But for such mitigation, the Turnpike would not have purchased the Subject. Therefore, the court finds that the Subject was purchased for purposes, and in furtherance, of the Widening Project. This conclusion is based not only on the undisputed facts and construction of N.J.S.A. 27:23-12, but is also in keeping with N.J.S.A. 27:23-19 where the Legislature desired to "liberally construe" and effectuate the Turnpike's laws as being "necessary for the welfare of the State and its inhabitants." See also Walter Reade, Inc. v. Dennis, 36 N.J. 435, 440-441 (1962) ("exemptions in favor of governmental agencies should be liberally construed" especially in light of an express intention to this effect in the enabling laws of the Turnpike).

Moreover, the Subject is not being held for an indeterminate purpose or time, nor with an intention to sell it as surplus property. Cf. Township of Washington, supra, 16 N.J. at 42 (where the Turnpike conceded that the land it has purchased for a road construction was never going to be used for "future . . . turnpike purposes" and was proposed to be sold off as "surplus property"). Rather, and pursuant to the 2009 and 2010 Approvals, the Subject was to be environmentally enhanced or created within certain periods, and immediately, or after mitigation completion, to be deed restricted in favor of the NJDEP and dedicated for public purposes.

The Township argues that even if the Subject is exempt under N.J.S.A. 27:23-12, areas in excess of what is required by the NJDEP for mitigation should be taxed. The Township points to NJDEP's August 2009 letter that the Turnpike's proposed land donation of the Subject is a

mitigation by a ratio of 27:1. Further, the Township notes, since the exact amount donated by the Turnpike to the NJDEP is unknown, summary judgment is inappropriate.

The court is not persuaded. First, the veracity of the calculation in the August 2009 letter from the NJDEP to the Council is questionable. The ratio of lands preserved to wetlands impacted, or 258:119 is about 2:1 not 27:1. Further, a 27:1 ratio would mean that only 9.55 acres was impacted. This is not borne by the letter itself, and the 2009 and 2010 Approvals. The letter also acknowledges that the proposed land donation was "part of a larger wetland mitigation proposal" which included "purchase of wetland mitigation bank credits and the creation and enhancement of wetlands." Therefore, the Township's reliance on the letter as proof that the Turnpike acquired land in excess of what was required for mitigation is misplaced.

Second, the NJDEP-approved permits require mitigation at certain ratios (1:1 or a minimum of 2:1). When so added, the amount of land required of the Turnpike, whether as donation or as acres on which environmentally sensitive areas were to be restored, enhanced, or created, was at least 400 acres.[10] This is without considering the 2009 Approval's requirement for

[10] Pursuant to the 2009 Approval, the Turnpike was required to mitigate 138.2 acres of freshwater wetlands (120.3+ 3.7+14.2) and 2.1 acres of State open waters totaling 140.3 acres. At a 2:1 ratio (if creating or restoring wetlands), the Turnpike would be required to mitigate with 280.6 acres (140.3 x 2). This when added to the 27.5 acres of mitigation required at a 1:1 ratio, and 181.11 acres for impact to riparian zones (80.8 x 2+19.51) provides a total of 489.21 acres required for mitigation of wetlands alone. At a 3:1 ratio, the minimum ratio of constructing wetland enhancement projects, the Turnpike would be required to mitigate with 420.9 acres (140.3 x 3) of wetlands alone. This is in addition to the 93 acres identified as vernal habitat areas to be mitigated. In either case, the acreage is larger than the 397.4 acres of the Subject. When the additional acreage required under the 2010 Approval is counted, namely, 34.654 acres, see supra p. 5, the total acreage required for mitigation is even higher than the size of the Subject.

The 2012 third-party contract for construction of "one freshwater wetland and riparian zone mitigation site" on the "400 plus acres," delineates 139 acres of clearing and other work to "provide 42.7 acre-credits of wetland mitigation, 48.4 acre-credits of riparian zone mitigation, 6.1 acres of vernal pool habitat mitigation and 4.7 acres of wood turtle habitat mitigation." While this totals 240.9 acres, it does not require a conclusion that the Turnpike acquired more than was needed by the NJDEP for mitigation as evidenced by the 2009 and 2010 Approvals. As specified in the Approvals, the permits controlled if there was any conflict between the permit conditions and the approved mitigation plans.

mitigation of vernal habitats (wetland/transition areas) at a 27:1 ratio, plus upland, if mitigation was by enhancement.

Finally, as the Court observed in Township of Washington, supra, purchasing property for "a public project . . . may . . . be more in the public interest" since it could be more "economical to buy an entire tract." 16 N.J. at 43. Therefore, "more latitude necessarily is allowed as to the quantity of land bought than" where property is acquired by condemnation. Ibid. Indeed, absent "bad faith . . . the practice should be encouraged." Ibid. However, the "burden of" proving that the alleged excess land is to be used for a public purpose, and that the purchase was "in the public interest . . . for the purposes specified in the enabling" law, is upon the government buyer. Ibid. Here, and for reasons stated above, this court has found that the Turnpike's acquisition of the Subject for mitigation, was for, and in conjunction with, the Widening Project, and indeed a direct consequence of the same. Thus, the purchase is within the intent and language of Turnpike's enabling statute, and for purposes of N.J.S.A. 27:23-12. Therefore, even if there was some excess acreage, it does not require a change in the analysis.

C. Subject Matter Jurisdiction for Tax Year 2012

The remaining issue is whether the Turnpike is entitled to an exemption for tax year 2012. Undisputedly, failure to file timely appeals deprives this court of subject matter jurisdiction even if the claim is that the property or plaintiff is statutorily tax exempt. See City of Newark v. Block 322, Lots 38 and 40, 17 N.J. Tax 103, 106 (Tax 1997); State v. Borough of Eatontown, 366 N.J. Super. 626, 635 (App. Div. 2004); New Jersey Transit Corp. v. Borough of Somerville, 139 N.J. 582 (1995).

In the context of rollback taxes on property acquired by a State agency or authority, two cases held that lack of appeals prevented the court from exercising subject matter jurisdiction. See

Dep't of Envt'l. Prot. v. Township of Franklin, 3 N.J. Tax 105, 113-14 (Tax 1981) (court lacked jurisdiction on 42 parcels for which no appeals were filed), aff'd, 5 N.J. Tax 476 (App. Div. 1983); Township of Monroe, supra, 2 N.J. Tax at 378.

In the latter case, the court heard the merits of one year which was not appealed, on grounds the Authority had relied upon its statement of exemption filed under N.J.S.A. 54:4-4.4 in lieu of an appeal, and the Supreme Court permitted such a result in Boys' Club of Clifton, Inc. v. Township of Jefferson, 72 N.J. 389 (1977). Township of Monroe, supra, 2 N.J. Tax at 374, 377. However, since the Supreme Court also prospectively held that filing tax exemption statements did not excuse non-filing appeals, the Tax Court ruled that the Authority could not rely on Boys' Club for subsequent tax years for which appeal deadlines had not passed. Township of Monroe, supra, 2 N.J. Tax at 377.

The Tax Court also distinguished and limited the holding of County of Bergen v. Borough of Paramus, 79 N.J. 302, 306, 310 (1979), where a nunc pro tunc appeal to the Division of Tax Appeals was allowed on grounds of "public importance" and since "public bodies and public funds [were] involved." The court first distinguished the case because the Borough had appealed the tax exemption denial, albeit in the Superior Court. Township of Monroe, supra, 2 N.J. Tax at 378-79. The court then refused to consider the public status of the parties and public funds as the "sole criterion" for allowing late appeals. Id. at 378. Rather, it held, a court should "consider each case individually and assume jurisdiction only when the matter is of such public importance that all other considerations are outweighed." Ibid.

Likewise, here, the Turnpike did not challenge the 2012 assessment in any forum, timely or otherwise. It raised the right to a 2012 exemption only in this summary judgment motion. Thus,

the court lacks subject matter jurisdiction to consider the merits of the 2012 exemption denial for the same reasons explicated in Township of Monroe, supra.

The Turnpike may have very well relied upon its compliance with N.J.S.A. 54:4-3.3b and the consequent exemption for 2011, as a basis for not filing a 2012 appeal. This reliance may have been reasonable given the lack of change in its ownership of the Subject, or change in the Subject's use, i.e., for mitigation to the NJDEP as a consequence of the Widening Project. However, this does not in and of itself prevent the assessor from denying an exemption for the reasons noted above, and thus, of Turnpike's responsibility to appeal the same.

In City of Hackensack City v. County of Bergen, 405 N.J. Super. 235, 245-47 (App. Div. 2009), the court rejected a similar argument, to wit, once the property was adjudicated as tax exempt, the City "could not assess the property." In that case, upon notification of ownership, the assessor had exempted the property, then placed it back on the tax rolls due to an alleged change in use. Id. at 245. Upon a timely challenge, the County Board granted the exemption and the property remained exempt for several years thereafter. Ibid. The assessor then repeated the exemption denial in later years, two intervening years being untimely appealed, the preceding and the two succeeding tax years, being timely appealed. Id. at 245-46. The court upheld the Tax Court's dismissals of the two intervening years noting that "the County was remiss in not filing timely appeals . . . which is considered a fatal defect." Id. at 247. This was despite the fact that the Tax Court granted an exemption for the years timely appealed, when the property was being used in the same manner as the years for which untimely appeals were filed.

In New Jersey Transit, supra, 139 N.J. at 584-85, the Court refused to consider a time barred tax appeal even where the assessor had initially agreed with Transit that it was not owner of a parcel, six years later claimed the opposite, and demanded tax for a 10-year period since the

time Transit became owner. In so ruling (and declining to apply a general 10-year statute of limitations period), the Court noted that since "most of the property of the State and its governmental units is generally exempt from taxation when used for public purposes" under "N.J.S.A. 54:4-3.3," a governmental agency or authority will rarely "be called upon to pay tax bills, provided they file their exemptions and appeals in a timely fashion." Id. at 591.

The Turnpike argues that the plain language of N.J.S.A. 54:4-3.3b does not impose any use condition to an exemption, therefore, it is entitled to rely on its plain language. It is true that this is the first case construing N.J.S.A. 54:4-3.3b as not foreclosing the assessor from denying an exemption on grounds that the property was not used for a Turnpike purpose. However, cases prior to the appeal deadline for tax year 2012 consistently ruled that property is not tax exempt simply because the Turnpike was its owner, otherwise the constitutional mandate on uniform taxation would be violated. Township of Washington, supra; Township of Holmdel, supra. Although in the former case the court noted that "[t]he usual rule for the commencement of a tax exemption on property is that set forth in N.J.S.A. 54:4-3.3b," it also noted that the Turnpike would "have an exemption [in] future years" as long as it met "the requirements of N.J.S.A. 27:23-12." See 137 N.J. Super. at 547, 551. There is nothing to indicate that N.J.S.A. 54:4-3.3b overruled this precedent.

Nor can these higher courts' rulings be deemed to have been limited or overruled by a later 1988 Tax Court comment that "the State has no obligation to pay any local property tax after" it became exempt pursuant to N.J.S.A. 54:4-3.3b. Township of Pohatcong, supra, 9 N.J. Tax at 544. That case addressed whether rollback taxes could be imposed in the year the tax exemption was granted. Id. at 542-43. Thus, the quoted observation does not control in deciding whether a failure to appeal the denial of a previously granted exemption is a fatal jurisdictional defect.

In sum, the court finds that the Turnpike's claim for tax exemption for 2012, raised only in this summary judgment motion, is time barred.

CONCLUSION

Summary judgment will be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). Here, the matter called for an interpretation of the tax exemption statutes, a matter of law. None of the material facts required to decide the issue were in genuine dispute. Therefore, summary judgment is appropriate.

For the reasons explicated above, the court finds that the Subject is tax exempt for 2013 and 2014. Accordingly, the Turnpike's motion for summary judgment is granted in part. The Township's counterclaims for 2013 and 2014 are dismissed with prejudice. The court also finds that it lacks subject matter jurisdiction for 2012. Accordingly, the Township's cross-motion for summary judgment is granted in part.