NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2723-20

ATLANTIC CITY MUNICIPAL UTILITIES AUTHORITY,

Plaintiff-Appellant,

v.

CITY OF ABSECON, CITY OF PLEASANTVILLE, TOWNSHIP OF GALLOWAY and TOWNSHIP OF EGG HARBOR,

Defendants-Respondents.

———————————————————

Submitted March 9, 2022 – Decided June 9, 2022

Before Judges Gilson and Gooden Brown.

On appeal from the Tax Court of New Jersey, Docket Nos. 012518-2020 and 000441-2021.

Law Office of Daniel J. Gallagher, attorneys for appellant (Daniel J. Gallagher, on the briefs).

Blaney, Donohue & Weinberg, P.C., attorneys for respondent City of Absecon (Michael J. Coskey, on the briefs).

Cooper Levenson, PA, attorneys for respondent City of Pleasantville (Michael J. Coskey, on the briefs).

The Law Offices of Thomas G. Smith, attorneys for respondents Township of Galloway and Township of Egg Harbor join in the brief of respondents City of Absecon and City of Pleasantville.

PER CURIAM

Atlantic City Municipal Utilities Authority (the Authority) appeals from an order dismissing two tax complaints it filed challenging the tax assessments on various parcels of land (the Lands) it owns in four municipalities: City of Absecon, City of Pleasantville, Township of Galloway, and Township of Egg Harbor (collectively, the Municipalities). The Lands are all used by the Authority to supply potable water to Atlantic City.

The tax court held that the Lands were subject to taxation under N.J.S.A. 54:4-3.3 and dismissed the Authority's complaints, which sought to declare that the Lands were exempt from taxation. We hold that the Authority's first complaint was time-barred because it was filed beyond the deadline for challenging tax assessments in 2020. We affirm the dismissal of the second complaint because we agree with the tax court that N.J.S.A. 54:4-3.3 authorizes the taxation of publicly owned land "used for the purpose and for the protection

of a public water supply," and the Lands were used as part of Atlantic City's public water supply.

I.

The Authority is a municipal utility responsible for supplying potable water to Atlantic City. The Authority owns various parcels of land in the Municipalities. It is undisputed that those Lands are used for the purpose of supplying water to Atlantic City. For years, the Municipalities have assessed the Lands located in their towns and have collected taxes on the assessments of the Lands. It is also undisputed that the Municipalities have not collected taxes on the assessments of the improvements made on the Lands.

On July 30, 2020, August 6, 2020, and October 27, 2020, counsel for the Authority sent letters to the tax assessors for the Municipalities requesting that the Lands be exempt from taxation under N.J.S.A. 40:14B-63. Although the record does not contain the responses from the Municipalities, the Authority represented that its requests for tax exemption were rejected.

On November 16, 2020, the Authority filed a complaint in the tax court seeking a declaration that the Lands were exempt from taxation and enjoining the Municipalities from collecting taxes on the Lands beginning in the fourth quarter of 2020. On January 25, 2021, the Authority filed a second complaint

in the tax court seeking the same declaratory relief and injunction on collecting taxes on the Lands. Both complaints represented that the Lands "are used exclusively for the production and purification of water which [the Authority] supplies to the City of Atlantic City."

The Municipalities moved to dismiss the complaints, arguing that the Authority was not entitled to an injunction preventing them from assessing and collecting taxes on the Lands. The tax court heard oral argument on the motions and, on May 7, 2021, issued an opinion and order dismissing the complaints. The tax court held that the Lands are subject to taxation under N.J.S.A. 54:4-3.3 because the Lands were "used for the purpose and for the protection of a public water supply." The Authority now appeals from the order dismissing its complaints.

II.

On appeal, the Authority argues that the tax court misinterpreted N.J.S.A. 54:4-3.3 by not distinguishing between lands held for the purpose of a water supply in contrast to lands held for the protection of a water supply. The Authority argues that the Municipalities should be required to establish which of its Lands are used for watershed purposes and that only those lands will be

subject to taxation because those lands are used for the purpose and protection of Atlantic City's water supply.

A. The Timeliness of the Authority's Complaints.

The Municipalities argue that the Authority's complaint was filed late and that the tax court did not have subject-matter jurisdiction to address the complaints. We start with this argument because it is a jurisdictional question.

We reject the Municipalities' argument that the tax court lacked jurisdiction. We do agree, however, that the first complaint filed by the Authority was filed out of time. The tax court has jurisdiction to hear appeals from final decisions made by a County Board of Taxation, the Director of the Division of Taxation, and municipal officials making decisions on tax matters. See R. 8:2.

Usually, a taxpayer has until April 1 to file an action challenging a tax assessment for a given year. See N.J.S.A. 54:3-21. In 2020, that deadline was extended to July 1, 2020, because of the COVID-19 pandemic. See L. 2020, c. 35.

The Authority filed its first complaint on November 16, 2020, and sought to challenge the tax assessment from the fourth quarter of 2020. That complaint

was untimely. Accordingly, the dismissal of the first complaint will be affirmed on the alternative grounds that it should have been dismissed as filed late.

The Authority's second complaint was filed on January 25, 2021, and sought declaratory and injunctive relief concerning the collection of taxes on the Lands. We construe that complaint as seeking relief from the taxes assessed in 2021 and in subsequent years. Accordingly, that complaint was timely, and we will address the substance of that second complaint.

B. Whether the Lands are Subject to Taxation.

The question presented on this appeal is a question of statutory interpretation. Accordingly, we review that issue de novo. State v. Scudieri, 469 N.J. Super. 507, 516 (App. Div. 2021). Moreover, because this matter came before the tax court on a motion to dismiss, we apply a plenary standard of review. Sickles v. Cabot Corp., 379 N.J. Super. 100, 105-06 (App. Div. 2005); Passarella v. Twp. of Wall, 22 N.J. Tax 600, 603 (App. Div. 2004).

In interpreting a statute, a court's objective "'is to effectuate legislative intent,' and '[t]he best source for direction on legislative intent is the very language used by the Legislature.'" Bozzi v. City of Jersey City, 248 N.J. 274, 283 (2021) (quoting Gilleran v. Twp. of Bloomfield, 227 N.J. 159, 171-72 (2016)). Words in a statute are to "be given their generally accepted meaning"

and "read and construed with their context." N.J.S.A. 1:1-1. "If the language is clear, the court's job is complete." In re Expungement Application of D.J.B., 216 N.J. 433, 440 (2014).

Nevertheless, "statutes are to be read sensibly, the purpose and reason for the legislation controlling, rather than construed literally." Henderson v. Herman, 373 N.J. Super. 625, 634 (App. Div. 2004) (quoting Suter v. San Angelo Foundry & Mach. Co., 81 N.J. 150, 160 (1979)). Our Supreme Court has explained that "when all is said and done, the matter of statutory construction . . . will not justly turn on literalisms, technisms, or the so-called formal rules of interpretation; it will justly turn on the breadth of the objectives of the legislation and the commonsense of the situation." Perrelli v. Pastorelle, 206 N.J. 193, 200 (2011) (alteration in original) (quoting Jersey City Chapter of Prop. Owner's Protective Ass'n v. City Council of Jersey City, 55 N.J. 86, 100 (1969)).

Publicly owned property, which is used for a public purpose, is generally exempt from taxation by the State and any subdivision of the State. See N.J.S.A. 54:4-3.3. That exemption also applies to property owned by a municipal authority. N.J.S.A. 40:14B-63. There is, however, an exception to that tax exemption for lands that are used for public water supplies. See N.J.S.A. 54:4-3.3.

In that regard, the Municipal and County Utilities Authorities Law, N.J.S.A. 40:14B-1 to -78, states in relevant part:

> Every utility system and all other property of a municipal authority are hereby declared to be public property of a political subdivision of the State and devoted to an essential public and governmental function and purpose and, other than lands subject to assessment and taxation pursuant to Revised Statutes 54:4-3.3, shall be exempt from all taxes and special assessments of the State or any subdivision thereof.
>
> [N.J.S.A. 40:14B-63.]

The exception to the tax exemption is set forth in N.J.S.A. 54:4-3.3, which, in relevant part, states:

> The lands of counties, municipalities, and other municipal and public agencies of this State used for the purpose and for the protection of a public water supply shall be subject to taxation by the respective taxing districts where situated, at the taxable value thereof, without regard to any buildings or other improvements thereon, in the same manner and to the same extent as the lands of private persons, but all other property so used shall be exempt from taxation.

Accordingly, lands used for the purpose and for the protection of a public water supply can be taxed by municipalities where those lands are located. Ibid. In contrast, the improvements on those lands are exempt from taxation. Ibid. Our Supreme Court has explained that the purpose and intent of N.J.S.A. 54:4-3.3

> is to distribute the tax burden of the taxing district equably between the municipality owning watershed lands and the lands of other taxpayers of the district. It subjects such lands to taxation at their true value on the same terms and conditions as the lands of the other taxpayers in the district are subjected to.
>
> [City of Newark v. W. Milford Twp., Passaic Cnty., 9 N.J. 295, 301-02 (1952).]

The issue on this appeal is whether the Authority's Lands are subject to the taxation under N.J.S.A. 54:4-3.3. The tax court looked to the Authority's complaints, which represented that all the Lands were "used exclusively for the production and purification of water which [the Authority] supplies to the City of Atlantic City." Relying on that representation, the tax court held that the Lands all fell within the exception to the exemption and were subject to taxation by the Municipalities. We agree with that analysis and holding.

On appeal, the Authority argues that the tax court erred because it misinterpreted the statute by substituting the word "or" for "and." The Authority contends that N.J.S.A. 54:4-3.3 requires that land must be used both "for the purpose and for the protection of a public water supply" to be subject to taxation. The Authority then contends that its Lands were only used for the purpose of Atlantic City's water supply but not for its protection. We reject that argument for two reasons.

First, the Authority did not clearly make that argument before the tax court. We generally refrain from considering arguments not raised in the tax court. See Waterside Villas Holdings, LLC v. Monroe Twp., 434 N.J. Super. 275, 285 (App. Div. 2014) (noting that appellate courts generally decline to consider questions or issues not properly presented to a tax or trial court).

Second, we reject the argument on its substance. The Authority seeks to create a distinction that the statute does not recognize. N.J.S.A. 54:4-3.3 is clear in stating it allows taxation of lands used for a public water supply. Although the statute uses the terms "for the purpose and for the protection of a public water supply," the plain language of the statute does not suggest that the Legislature intended to distinguish between types of uses of the land; rather, the language supports an interpretation that any land used for a public water supply will be subject to local taxation.

Consistent with its language, N.J.S.A 54:4-3.3 has never been interpreted as drawing a distinction between lands used for the purpose of a public water supply, in contrast to lands also used for the protection of a public water supply. Indeed, we rejected that distinction over fifty years ago in City of Clifton v. North Jersey District Water Supply Commission, 104 N.J. Super. 147, 150 (App. Div. 1969).

In City of Clifton, the Water Commission argued that its lands were tax exempt. 104 N.J. Super. at 149. Specifically, it challenged the taxation of its reservoir lands and protected areas comprising approximately 6,300 acres. Ibid. Those lands extended for approximately eighteen miles from the reservoir through several municipalities and some of the lands were used for the transmission of water via aqueducts and other lands were used for a "balancing tank" that equalized water pressure through the pipelines leading to various municipalities. Ibid.

The Water Commission argued that lands where the balancing tank and aqueduct transmission system were located were tax exempt. Id. at 149. The Water Commission conceded that its watershed lands were taxable because they were used "for the purpose and for the protection of a public water supply." Id. at 150. The Commission, however, argued that the lands used for transmission and distribution of water were not subject to taxation because they were not lands used for the protection of a public water supply. Ibid. We rejected that distinction and held that

> a fair interpretation of [N.J.S.A.] 54:4-3.3 [] does not warrant such a distinction. Lands used 'for the purpose and for the protection of a public water supply' would include the lands in question. They are for the purpose of a public water supply, albeit they are used as part of the system whereby that purpose is effected.

[Ibid.]

The Authority cites to no case recognizing the distinction it seeks to make between purpose and protection. The cases that have discussed N.J.S.A. 54:4-3.3 have not distinguished between the use of the land. Instead, the focus has been on whether the land is used in connection with a public water supply. See City of E. Orange v. Twp. of Livingston, 102 N.J. Super. 512, 527, 537-38 (Law Div. 1968), aff'd, 54 N.J. 96 (1969).

In City of East Orange, East Orange brought an action to compel other municipalities and a county to assess lands East Orange owned in those municipalities as farmlands. 102 N.J. Super. at 517-18. The lands at issue included approximately 2,500 acres of lands East Orange had purchased as a reserve for its water supply. Id. at 518. The water supply was under the lands and East Orange used the surface of the lands for agricultural uses, as well as for recreational and educational purposes. Ibid. In rejecting East Orange's contention that the lands should be treated as farmlands, the court in City of East Orange recognized that the lands were subject to taxation under N.J.S.A. 54:4-3.3. Id. at 529. Significantly, for our analysis, the court in City of East Orange did not make any distinction on how the lands were being used. In that regard, it did not matter that the lands were being used for agricultural purposes, or as

a golf course, or as a nature preserve; rather, the court focused on the use of the lands as part of a public water supply.

In short, in the over 100 years since N.J.S.A. 54:4-3.3 made lands used for the purpose and for the protection of public water supplies subject to taxation, no court has made the distinction that the Authority seeks to create. Those holdings are consistent with the plain language of the statute. Indeed, had the Legislature disagreed with the courts' interpretation, it presumably would have amended N.J.S.A 54:4-3.3. See Johnson v. Scaccetti, 192 N.J. 256, 277 (2007) ("[T]he Legislature knows how to express its disagreement with case law by amending a statute if it believes a court has misconstrued its intent."). Consequently, we hold those lands "used for the purpose and for the protection of a public water supply" include the Authority's Lands, which include lands used as watersheds, lands through which water pipes run, and lands which contain tanks for storing the water.

We also reject the Authority's argument that the Municipalities should be required to establish which parcels of the Lands are used for watershed purposes. The burden of proving a tax exemption falls on the party seeking the exemption. See Int'l Schs. Servs., Inc. v. W. Windsor Twp., 207 N.J. 3, 15 (2011); Congregation Chateau Park Sefard v. Twp. of Lakewood, 30 N.J. Tax 225, 232

(Tax 2017). More importantly, as we have held, the statute does not distinguish between lands used for watershed purposes and lands used for other purposes. All lands used in connection with a public water supply are lands used for the purpose and for the protection of the water supply.

The Authority also argues that the tax court misconstrued N.J.S.A. 54:4-3.3 by not explaining what the statute means by the phrase "but all other property so used shall be exempt from taxation." Read in context, that phrase clarifies that "lands of counties, municipalities, and other municipal and public agencies of this State," which are not used for the purpose and for the protection of a public water supply, are exempt from taxation. In other words, the phrase refers to the general rule that public lands used for a public purpose, other than water supply, are exempt from taxation. See N.J.S.A. 54:4-3.3.

In summary, we affirm the order dismissing the Authority's two complaints. The dismissal of the Authority's first complaint is affirmed on the alternative grounds that that complaint was filed out of time. The portion of the order dismissing the Authority's second complaint is affirmed on the substantive grounds that the Lands are subject to taxation as lands used for the purpose and for the protection of a public water supply.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.
CLERK OF THE APPELLATE DIVISION