

Review of Decisions Relating to  
the Tax Court of New Jersey  
Sep. 2016 to Sep. 2017

Hon. Patrick DeAlmeida, P.J.T.C.

# Composition of the Tax Court

- By statute, there can be no less than 6 and no more than 12 Tax Court Judges.
- Statute requires Tax Court Judges to be chosen for their “qualifications, knowledge, and experience” in the area of taxation.
- Nominated by Governor, confirmed by Senate, tenure vote after 7 years.
- Same terms of office, pension rights, and compensation as Superior Court Judges.

# Assigned to Tax Court

- Hon. Patrick DeAlmeida, P.J.T.C., Trenton
- Hon. Vito L. Bianco, J.T.C., Morristown
- Hon. Mala Sundar, J.T.C., Trenton
- Hon. Joseph A. Andresini, J.T.C., Hackensack
- Hon. Christine M. Nugent, J.T.C., Newark
- Hon. Mary Siobhan Brennan, J.T.C., Trenton
- Hon. Kathi F. Fiamingo, J.T.C., Mount Holly
- Hon. Joshua D. Novin, J.T.C., Morristown
- Hon. Mark Cimino, J.T.C., Bridgeton
- Hon. Michael J. Gilmore, J.T.C., Newark
- Hon. Jonathan A. Orsen, J.T.C., Newark



# One Vacancy

- At present, the Governor has not made a nomination for one vacant Tax Court Judge position.

# E-Filing

- Mandatory in all cases in which the taxpayer is represented by an attorney.
- Assessors, Administrators, and Municipal Clerks may register.
- All documents now uploaded to electronic jacket by parties and court.

# E-Filing

- Past and future proceedings are reported.
- Public access is easier for registered parties.
- More difficult to remove documents.

# Case Filings

- As of August 30, 2017:

12,636 Complaints for tax year 2017.

12,352 Complaints at this time in 2016.



# Case Dispositions

- July 1, 2016 to June 30, 2017 Court Year:
- 13,102 Complaints docketed.
- 17,567 Matters closed.

# Case Filings

- As of July 31, 2017
- 35,756 Pending Matters
- 3,575 per Judge Pending

# Valuation

# Reservoir Property

- Merrill Creek Reservoir v. Township of Harmony, Tax Court, 2016, appeal pending.
- A 16.6 billion gallon reservoir on approximately 840 acres. Not used for drinking water.

# Merrill Creek Reservoir v. Township of Harmony

- Required as water storage for purpose of replacing the freshwater equivalent of water evaporated by electric power generation units on Delaware River.
- Reservoir has more capacity than necessary for its intended purpose. Discharges were necessary only four times in twenty years.

# Merrill Creek Reservoir v. Township of Harmony

- Property assessed at approximately \$220,000,000.
- Parties agreed to use cost approach.
- Judge Bianco adopted an opinion based on the original cost to construct trended to the valuation dates.

# Merrill Creek Reservoir v. Township of Harmony

- The court did not include entrepreneurial incentive because profit was not the primary motivation for developing the property.
- Functional obsolescence: The superadequacy of the reservoir's capacity.

# Merrill Creek Reservoir v. Township of Harmony

- Judge Bianco made a 15% deduction for functional obsolescence.
- Functional obsolescence can occur in regulated properties where excess capacity is required by the regulator.



# Landlocked Parcel

- Acocella v. Township of Cedar Grove, Tax Court, 2016.
- The subject property is vacant land, having no frontage or roadway access.
- The property owner also owns an adjacent lot with roadway access.

# Acocella v. Township of Cedar Grove

- The taxpayers claimed the parcel is landlocked and of limited use and value.
- The municipality argued that the common ownership of the two lots bestows development potential on the subject property.

# Acocella v. Township of Cedar Grove

- The parcels were purchased decades apart; the vacant land was purchased as a buffer against future development and nuisance uses.
- Judge Nugent concluded that the parcel's highest and best use is a vacant land that cannot be developed.

Acocella v.  
Township of Cedar Grove

- Common ownership with adjoining parcel was an insufficient basis on which to conclude that an implied right of access over the adjoining parcel renders the subject eligible for development.

# Appraiser's Verification of Data

- VBV Realty, LLC v. Township of Scotch Plains, Tax Court, 2017.
- Comparable sales approach. A critical element of the appraiser's analysis is the data verification process.

# VBV Realty, LLC v. Township of Scotch Plains

- The sales, and relevant data, “were not verified, confirmed, or corroborated with any individuals possessing firsthand knowledge of, or a familiarity with those sales transactions.”

# VBV Realty, LLC v. Township of Scotch Plains

- Expert relied exclusively on information gathered from the New Jersey Association of County Tax Boards website and the Garden State Multiple Listing Service, public tax records, Vitalgove.net, Costar, and discussions with tax assessors.

# VBV Realty, LLC v. Township of Scotch Plains

- Expert did not contact attorneys involved in the transactions, or listing or purchasing parties or brokers who negotiated the transactions.
- Similar shortcomings in the income approach. No leases or lease abstracts examined.



# VBV Realty, LLC v. Township of Scotch Plains

- The municipality's expert made adjustments that were based on subjective observations and personal experience.
- The expert did not rely on studies, surveys, or objective market data.

# Procedural Issues

# Late Filing of Complaint; Notice of Assessment

- 1959 Highway 34, LLC v. Township of Wall, Tax Court, 2016.
- Monmouth County pilot project.
- The statute establishing the time to file an appeal was amended for the pilot program.

# 1959 Highway 34, LLC v. Township of Wall

- Amendment provides for a January 15<sup>th</sup> filing deadline for county board appeals, and April 1<sup>st</sup> deadline for direct appeals.
- No mention is made in amendment of deadline for revaluation municipalities.

# 1959 Highway 34, LLC v. Township of Wall

- Here, Wall Township underwent a district-wide revaluation.
- The taxpayer's Complaint was filed on April 27<sup>th</sup>.

# 1959 Highway 34, LLC v. Township of Wall

- The court concluded that the Legislature intended for the April 1<sup>st</sup> deadline to apply in revaluation and reassessment municipalities in the pilot program.
- Here, Complaint was filed past the April 1<sup>st</sup> deadline.

# 1959 Highway 34, LLC v. Township of Wall

- However, the court concluded that the taxpayer was not provided sufficient notice of the April 1<sup>st</sup> appeal deadline.
- Statute requires that the assessment notice “contain information instructing taxpayers on how to appeal their assessment.”

# 1959 Highway 34, LLC v. Township of Wall

- The assessment card referred the taxpayer to the Tax Court website. No deadline date was mentioned on the card.
- A taxpayer would have to navigate several links to get the court rules, which do not specifically address appeals from the pilot program county.



# Freeze Act

- Ritchie & Page Distrib. Co. v. City of Trenton, Tax Court, 2016.
- Judgment entered for tax year 2014.
- Taxpayer sought Freeze Act relief for tax years 2015 and 2016.

# Ritchie & Page Distrib. Co. v. City of Trenton

- The municipality opposed relief because:
  - Ownership of the property changed.
  - Occupancy of the property changed.
  - The assessor's Chapter 91 request was not answered.

# Ritchie & Page Distrib. Co. v. City of Trenton

- The successor owner authorized the application; the fact that the prior owner's name appears in the caption is not relevant.
- Change in occupancy does not equate to a substantial change in the property.

# Ritchie & Page Distrib. Co. v. City of Trenton

- Chapter 91 and the Freeze Act are separate statutes that do not relate to one another.
- The consequences for failure to comply with Chapter 91 do not include a denial of Freeze Act relief.

# Military Service Disability

- Fisher v. City of Millville, Tax Court, 2016,
- The property owner served in the military during Operation Enduring Freedom, otherwise known as the War on Terror.

# Fisher v. City of Millville

- During training in the United States, plaintiff fell off a two-story building, resulting in 100% disability.
- Despite her injuries, she was able to continue serve for a period of time.

# Fisher v. City of Millville

- She was stationed at Fort Stewart, Georgia in a Rear Detachment.
- Her duties included shipping weapons, food, clothing, and supplies for the overseas portion of her unit. She also performed military police duties at Fort Stewart.

# Fisher v. City of Millville

- The relevant statute requires that the veteran “serve in a theater of operation” and “in direct support of that operation” for at least 14 days.
- Plaintiff: The War on Terror is not limited to a geographic location but is, instead, worldwide.



# Fisher v. City of Millville

- The court did not address this question, as it determined that plaintiff's service was not "in direct support" of the operation.
- The taxpayer "was never directly exposed to the dangers or potential dangers of the battlefield." The fact that she shipped materials to the battlefield is not enough to satisfy the statute.

# Fisher v. City of Millville

- While the taxpayer's military service must be commended, the court is constrained to follow the Legislature's decision to limit the benefit to those veterans who provided "direct support," which was changed from the requirement of only "support" for previous military operations.

# Fisher v. City of Millville

- The Appellate Division affirmed Judge Cimino's holding.
- Opinion is Published.

# Fisher v. City of Millville

- The court held that plaintiff's injury and her role in the Rear Detachment do not satisfy the statutory requisites of service "in the theater of operations and in direct support of that operation . . . ."
- "The determination turns on the exposure of the service member to the harms of war."

# Fisher v. City of Millville

- The court distinguished the holding in Wellington v. Township of Hillsborough, a 2012 Tax Court opinion.
- In Wellington, the veteran was stationed in a laboratory in the United States. Chemical weapons captured on the battlefield in Iraq were brought to him for analysis.

# Fisher v. City of Millville

- Exposure to the chemical weapons caused the veteran to be 100% disabled.
- The Tax Court held that the veteran had been “exposed to the dangers of the battlefield” while in the United States, satisfying the theater of operations and direct support requirements.

# Fisher v. City of Millville

- A Petition for Certification to the New Jersey Supreme Court is pending.

# Township of Galloway v. Duncan

- Taxpayer also served during Operating Enduring Freedom.
- Dr. Duncan served at Andrews Air Force Base, where she was a neurologist in a medical care unit. She subsequently was Chief of Neurology Services.



# Township of Galloway v. Duncan

- She provided emergency triage to patients arriving with war injuries from Iraq and Afghanistan, including those exposed to and suffering from IED blasts, gunfire, and artillery fire.
- Soldiers were transported to her directly from the point of injury overseas.

# Township of Galloway v. Duncan

- Dr. Duncan also evaluated soldiers with head injuries in the field via video, clearing them to return to battle.
- As a result of her experiences, she was declared 100% disabled from a service-oriented disability.

# Township of Galloway v. Duncan

- “Theater of operation.” There is more than one theater of operation in the War on Terror and Andrews Air Force Base was one such theater of operation.
- “Direct support.” Dr. Duncan endured the “experience of war” because of her exposure to battlefield injuries shortly after they occurred.

# Township of Galloway v. Duncan

- An appeal is pending in the Appellate Division.

- White Oaks Country Club v. Township of Franklin, Tax Court, 2017.
- The Department of Environmental Protection, a State entity, purchased the subject property from White Oaks Country Club, which had operated a for-profit golf course on the parcel.

# White Oaks Country Club v. Township of Franklin

- Purchase was made by the Office of Green Acres as part of its Pinelands Project. The project is intended to increase conservation and recreation in the Pinelands.
- The agency purchased the property to ensure that it would not be developed.

# White Oaks Country Club v. Township of Franklin

- Funds from Garden State Preservation Trust Act.
- Operating agreement to permit White Oaks to continue to operate the golf course.

# White Oaks Country Club v. Township of Franklin

- DEP approved all fees.
- Property could be used only for the operation of a golf course.
- DEP is paid a yearly base amount, plus 15% of annual gross revenues. The revenue is dedicated to the Division of Fish and Wildlife.



# White Oaks Country Club v. Township of Franklin

- Operation must be consistent with operation of a public facility.
- Restaurant permitted to enhance and complement daily operation.

# White Oaks Country Club v. Township of Franklin

- Not subject to Leasehold Act, because there is no lease in place at the property.
- N.J.S.A. 54:4-1.10 allows for the taxation of public property used for a private purpose in the absence of a lease.

# White Oaks Country Club v. Township of Franklin

- Court concluded that the operation of a golf course and related facilities furthered the statutory public purpose of the DEP.
- Statutes require DEP to provide recreational opportunities on State property, and to preserve land for the benefit of the citizens of the State.

